



The Institution of Engineers, Malaysia

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# **IEM Form of Contract for Civil Engineering Works**

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and is recommended for general use for civil engineering construction works in Malaysia.

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# IEM Form of Contract for Civil Engineering Works

## Articles of Agreement

This Agreement is dated.....

## Parties to Agreement

1..... (Company No.:.....)  
is a company incorporated in Malaysia and have its registered/business office at  
.....("Employer").

2..... (Company No.:.....)  
is a company incorporated in Malaysia and have its registered/business office at  
.....("Contractor").

## Background

- (A) The Employer has appointed the Contractor to design (to the extent required by this Contract), construct, complete the works (called in this Agreement the "Works") for
- (B) The Employer, has appointed..... of  
to design the Works and also to act as the Engineer for the purposes of the Contract.
- (C) The Contractor agrees to the appointment and undertakes to complete all the works required and . necessary to complete the Works.

## The Terms

1. The words used in this Agreement have the same meanings which are defined in the Conditions of Contract.
2. The Contract Sum is Ringgit Malaysia.....RM ( ). only  
and this sum cannot be changed unless this is expressly provided for in the Contract.
3. The following documents shall form the Contract:
  - (a) Letter of Acceptance;
  - (b) Articles of Agreement;
  - (c) Conditions of Contract;
  - (d) Drawings;
  - (e) Specifications;
  - (f) Bills of Quantities;
  - (g) other documents, letters, addenda and others which are specifically specified  
and identified by the parties as forming the Contract.

Signed by  
authorised representative of the  
Employer in the presence of

]  
]  
]  
]

Name  
LC. No.

Name  
LC. No.

**Signed by  
authorised representative  
of the Contractor  
in the presence of**

**]  
]  
]  
]**

Name  
LC. No.

Name  
LC. No.

# **IEM Form of Contract for Civil Engineering Works**

## **Conditions of Contract**

### **1 DEFINITIONS AND INTERPRETATIONS**

#### **1.1 Definitions**

The following words and expressions have the meanings given to them when used in this Contract unless the context requires otherwise:

- (1) "Appendix" means the appendix to these Conditions.
- (2) "Approved" means approved in writing by the Engineer including subsequent written confirmation of oral approval; "approval" means approval in writing and includes confirmation of oral approval.
- (3) "Bills of Quantities" means and comprises collectively the following documents:
  - (a) Bill A: Preliminaries
  - (b) Bill B: Bill of Quantities for Remeasured Works;
  - (c) Bill C: Schedule of Prices for Lump Sum Works;
  - (d) Bill D: Schedule of Rates for Lump Sum Works;
  - (e) Bill E: Schedule of Prime Cost and Provisional Sums;
  - (f) Bill F: Daywork Schedule; and
  - (g) Bill G: Summary of Contract Sum.
- 47.2. (4) "Certificate of Completion" means the certificate issued by the Engineer under Clause
- (5) "Certificate of Default" means a certificate issued by the Engineer under Clause 61.1(1).
- under Clause 48.4. (6) "Certificate of Making Good Defects" means the certificate issued by the Engineer
- (7) "Conditions" means the Conditions of Contract for Civil Engineering Works and Option Modules specified in the Appendix.
- (8) "Contract" or "Contract Document" means
  - (a) Letter of Acceptance;
  - (b) Articles of Agreement;
  - (c) Conditions of Contract;
  - (d) Drawings;
  - (e) Specifications;
  - (f) Bills of Quantities; and
  - (g) other documents, letters, addenda and others which are specifically specified and identified by the parties as forming the Contract.
- (9) "Contract Sum" means the sum set out in the Letter of Acceptance and is fixed subject only to adjustments expressly provided by the Conditions.
- (10) "Contractor" means the person, firm or corporation identified in the Articles of Agreement whose Tender has been accepted by the Employer.
- (11) "Constructional Plant and Equipment" means the equipment, apparatus, plant, machinery, and things of whatsoever nature required by the Contractor for the construction and completion of the Works (including the making good of any defects) but not intending to be part of the Works.
- (12) "Costs" means and includes
  - (a) the direct relevant costs of Constructional Plant and Equipment, materials, goods and labour actually incurred on Site by the Contractor; and



(b) costs of an overhead nature actually and necessarily incurred on Site by the Contractor; and

(c) the amount equivalent to the percentage stated in the Appendix of the sum of the costs referred to in (a) and (b) above, this amount is taken to include head office or other administrative overheads and financing charges.

It is the intention of the parties that "Costs" excludes profit

- (13) "Date for Commencement" means the date fixed for the commencement of the Works and this is the date determined in accordance with Clause 40.1(1).
- (14) "Date for Completion" means the date on or before which the Contractor must complete the Works and this date is fixed and can only be extended or varied in accordance with the express provisions of these Conditions.
- (15) "day" means a calendar day.
- (16) "Defects Liability Period" means a period the duration of which is stated in the Appendix and during which the Contractor must make good all defects notified to him by the Engineer.
- (17) "Drawings" means the drawings referred to in the Contract including those drawings issued from time to time by the Engineer.
- (18) "Employer" means the person, firm, corporation identified in the Articles of Agreement who has accepted the Tender.
- (19) "Engineer" means the person identified in the Articles of Agreement for the purposes of the Contract •
- (20) "Engineer's Representative" means the person appointed by the Engineer and notified to the Contractor under Clause 2.4(1).
- (21) "Letter of Acceptance" means the formal acceptance of the Tender by the Employer.
- (22) "Lump Sum Works" means those items of works shown on the Drawings or described in the Specifications and which are described and designated in the Bills of Quantities for Lump Sum Works.
- (23) "Option Module" means the Option Module appearing at the end of these Conditions.
- (24) "Permanent Works" means works of a permanent nature to be constructed in accordance with the Contract.
- (25) "Remeasured Works" means those items of works shown on the Drawings or described in the Specifications and which are described and designated in the Bills of Quantities for Remeasured Works.
- (26) "Schedule of Prices for Lump Sum Works" means the schedule included in the Bills of Quantities describing works which are neither Remeasured Works nor those works described and designated as Prime Cost or Provisional Sums.
- (27) "Section" means an identified and specific part of the Works in respect of which a corresponding date for completion and liquidated damages are specified in the Appendix.
- (28) "Specifications" means the Specifications included in the Contract together with any later modification or amendment which the Engineer may issue or approve from time to time.
- (29) "Site" means the land and other places on, under, in or through which the Works are to be constructed and can where applicable include
- (a) lands designated or provided by the Employer for the purposes of the Contract; and
- (b) lands proposed by the Contractor and agreed to by the Engineer for the purposes of the Contract.

- (30) "Temporary Works" means all temporary works of every kind required for the carrying out of the Works and which would be removed after the completion of the Works.
- (31) "Tender" means the Contractor's priced offer to the Employer for the construction, completion and maintenance of the Works in accordance with the provisions of the Contract
- (32) "Works" means collectively the Permanent Works and Temporary Works. .

## **1.2 Singular and Plural**

- (1) Words which are used in the singular only also include the plural and *vice versa* where the context - requires.

## **1.3 Headings**

- (1) The headings in these Conditions of Contract are not a part of the Contract and are not to be taken into consideration in the interpretation of the Contract

## **1.4 Clauses**

- (1) References to Clauses, Appendix and Option Modules are references to clauses, appendix and option modules of these Conditions.

## **1.5 Joint and Several Liability**

- (1) If any party to the Contract is a partnership joint venture or consortium, it is a term of this Contract that the individual persons, entities or companies comprising that party are jointly and severally liable to the other party under this Contract.
- (2) Either party to the Contract may, in its absolute discretion, commence arbitral or legal proceedings against any or all of the individual persons, entities or companies comprising the other party in respect of the obligations arising under this Contract
- (3) The party commencing the arbitral or legal actions under this Contract is not obliged to make any claim against all the persons, entities or companies comprising the other party.

## **2 ENGINEER AND ENGINEER'S REPRESENTATIVE**

### **2.1 Duties of Engineer**

- (1) The Engineer must carry out the duties specified in or which can be implied from the Contract

### **2.2 Authority of the Engineer**

- (1) The Engineer may exercise the authority specified in or necessarily to be implied from the Contract
- (2) Unless it is expressly stated in the Contract, the Engineer has no authority to amend the Contract or ' to relieve the Contractor of any of his obligations under the Contract.
- (3) The giving of any consent or approval by or on behalf of the Engineer does not in any way relieve the Contractor of any of his obligations under the Contract. The giving of any consent or approval will also not relieve the Contractor of his duty to ensure the correctness or accuracy of the matter or thing which is the subject of the consent or approval.

### **2.3 Named Individual**

- (1) If the Engineer is not an individual, the Engineer must within 14 days of the Letter of Acceptance notify to the Contractor in writing the name of the individual who will act on his behalf to carry out the duties or to exercise the authority of the Engineer for the purposes of the Contract.
- (2) The Engineer may change the named Engineer but this change can only take effect after the Contractor has been notified in writing of the change.

- (3) No person who is subsequently appointed to act as the Engineer is entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given earlier by the Engineer whom he replaces.

## **2.4 Engineer's Representative**

- (1) The Engineer's Representative may be appointed by and be responsible to the Engineer. The Engineer must notify the appointment of the Engineer's Representative to the Contractor in writing.
- (2) The Engineer's Representative assists the Engineer to watch and supervise the construction and completion of the Works and the making good of any defects in the Works.
- (3) The Engineer's Representative does not have any authorities under the Contract except those which are expressly delegated to him by the Engineer.

## **2.5 Delegation of Authorities by the Engineer**

- (1) Subject to Clause 2.5(4), the Engineer may delegate to the Engineer's Representative any of the authorities vested in the Engineer. The Engineer may also at any time amend or revoke the delegation.
- (2) The delegation of any authorities by the Engineer to the Engineer's Representative must be notified to the Contractor in writing. This delegation can only take effect after a written notice of the delegation has been received by the Contractor.
- (3) The authorities delegated to the Engineer's Representative continue to be in force until the Engineer notifies the Contractor in writing that the delegation has been revoked,
- (4) The Engineer must not delegate the making of any decision, the exercise of any authority or the issue of any certificate under Clauses 44.3, 46.2, 48.4, 59.2, 61.1, 61.4 and 62.4.
- (5) If the Contractor is not satisfied with any decision of the Engineer's Representative, he may refer the decision to the Engineer. The Engineer must confirm, reverse or vary the decision within 14 days after the Contractor has referred it to him.

## **2.6 Appointment of Assistants**

- (1) The Engineer may appoint any number of persons to assist the Engineer's Representative in carrying out his functions under Clause 2.4(2). He must notify the Contractor in writing of this appointment and the notice must also specify the scope of responsibilities of such persons.
- (2) The assistants do not have any authority to issue any instructions to the Contractor except for those directions that are necessary to enable them to carry out their duties in ensuring that the materials, goods or works are in accordance with the Contract.

## **2.7 Impartiality, Reasonableness and Timeliness**

- (1) The Engineer must act impartially within the terms of the Contract having regard to all the circumstances. The Engineer must also act impartially, reasonably and timely in exercising all or any of the authorities vested in him under the Contract
- (2) Similarly, the Engineer's Representative must also act impartially, reasonably and timely.

## **3 ENGINEER'S INSTRUCTIONS**

### **3.1 Instructions to be in Writing**

- (1) All instructions issued by the Engineer must be in writing.
- (2) Any instruction issued by the Engineer which is not in writing is of no effect. •
- (3) The provisions of this Clause 3.1 apply equally to instructions given by the Engineer's Representatives.
- (4) The Contractor must comply with all instructions properly issued by the Engineer.
- (5) Minutes of meetings on any matters must not be taken as instructions in writing.





**3.2 Confirmation of Oral Instructions**

- (1) Confirmation in writing of any oral instructions by the Engineer or minutes of meeting, whether before or after the carrying out of the instruction, is a properly issued instruction within the meaning of Clause 3.1. ■
- (2) The Contractor may, either before or after the carrying out of an instruction given other than in writing, confirm such instruction in writing with the Engineer. If this confirmation is not contradicted within 7 days by the Engineer, it is then a properly issued instruction within the meaning of Clause 3.1.

**3.3 Failure to Comply with Engineer's Instructions**

- (1) If the Contractor does not comply with an instruction properly issued by the Engineer 14 days after his receipt of such instruction (or such longer period as may be extended by the Engineer), Or before a date of compliance that is specified in the instruction,
  - (a) the Employer can then employ other persons to do whatever that is necessary to give effect to the instruction; and
  - (b) the Employer is entitled to deduct or set-off from any payment due to the Contractor ' under the Contract for any direct cost, losses, expenses and damages which the Employer suffers or incurs as a consequence.

**4 CONTRACT DOCUMENTS**

**4.1 Documents forming the Contract**

- ' (1) The following are the documents forming the Contract:
  - (a) Letter of Acceptance;
  - (b) Articles of Agreement;
  - (c) Conditions of Contract;
  - (d) Drawings;
  - (e) Specifications;
  - (f) Bills of Quantities; and
  - (g) other documents, letters, addenda and others which are specifically specified and identified by the parties as forming the Contract.

**4.2 Documents Mutually Explanatory**

- (1) All the documents forming the Contract are to be taken as mutually explanatory and be read as a whole.
- (2) If there is any conflict, inconsistency or ambiguity within or between the documents forming the Contract, such a conflict, inconsistency or ambiguity must be resolved by the Engineer by issuing an instruction to explain and adjust such a conflict, inconsistency or ambiguity.
- (3) In resolving any such conflict, inconsistency or ambiguity, the Engineer must treat the Letter of Acceptance, the Articles of Agreement and the Conditions of Contract (in this order of priority) as prevailing over those other documents forming the Contract

**4.3 Additional Costs Incurred**

- (1) If the Contractor incurs additional Costs in complying with the instruction issued by the Engineer under Clause 4.2(2), and as a direct consequence there is delay to the completion of the Works,
  - (a) these Costs may then be recovered by the Contractor under Clause 53; and
  - (b) the Engineer must take the delay into consideration in exercising his authority with respect to Clause 44 of these Conditions.

**4.4 Custody of Contract Documents**

- (1) The original set of the Contract Documents is to remain in the custody of the Employer.

- (2) Within 14 days after the execution of the Contract, the Engineer must arrange a duplicate set of the Contract Documents for the Contractor at no charge to the Contractor.

#### **4.5 Confidentiality of Contract Documents**

- (1) The Contractor must use the Contract Documents and all subsequent documents issued to him by the Engineer only for the purposes of the Contract
- (2) Unless the written consent of the Engineer is obtained, the Contractor must not disclose or make available to a third party the Contract Documents and all the details and information contained within the Contract Documents.

#### **4.6 Language and Law**

- (1) The Contract Documents have been prepared in the English Language and the language of the Contract is English.
- (2) This Contract is subject to Malaysian law.

### **5 DRAWINGS**

#### **5.1 Supply of Drawings**

- (1) In addition to Clause 4.4(2), the Engineer must make available to the Contractor two sets of the Drawings within a reasonable time after the issuance of the Letter of Acceptance. These two sets of Drawings must be supplied without any extra charge to the Contractor.
- (2) If the Contractor requires further copies of the Drawings, these must be obtained from the Engineer. The Engineer may impose reasonable charges for providing to the Contractor these further copies of the Drawings.
- (3) One set of the Drawings supplied to the Contractor under Clause 5.1(1) together with a copy of Specifications must be kept on Site by the Contractor. The Engineer or his authorised representatives can inspect this set of the Drawings or the Specifications on Site at all reasonable times.

#### **5.2 Further Drawings by the Engineer**

- (1) The Engineer has authority under the Contract to issue from time to time before the completion of the Works further drawings to the Contractor. These further drawings must be issued to the Contractor by way of instructions.
- (2) The provisions of Clauses 3.1 and 3.3 apply to these instructions issued under Clause 5.2(1).

#### **5.3 Requests for Further Drawings**

- (1) If the Contractor considers that further drawings are necessary for the proper execution and completion of the Works, he must serve a notice to that effect to the Engineer.
- (2) The notice served under Clause 5.3(1) must include the following details:
  - (a) descriptions of the drawings required; and
  - (b) information of why and by when the drawings are required.
- (3) Further to the requirements of Clause 5.3(2), the notice must be served within a reasonable time such that
  - (a) the planning or execution of the Works will not be delayed or affected; and
  - (b) the Engineer can respond to the notice and instruct the necessary and required drawings to be issued.
- (4) Further drawings referred to in Clause 5.3 must be issued by way of instructions. The provisions of Clauses 3.1 and 3.3 also apply to these instructions.



**5.4 Delay in Issuing Further Drawings**

- (1) If the Engineer fails or is unable to issue the required drawings within the time reasonable in all circumstances, and the Contractor suffers delay to the completion of the Works and incurs Costs, then ■
  - (a) such delay must be taken into consideration by the Engineer in determining any new Date for Completion to which the Contractor may be entitled to under Clause 44; and
  - (b) • the Costs may be recovered by the Contractor under Clause 53.
- (2) The provision in Clause 5.4(1) is subject to the Contractor having fulfilled the requirements of Clause 5.3(3).

**6 CONTRACTOR'S DESIGN**

**6.1 Permanent Works Designed by Contractor**

- (1) If it is a requirement of the Contract that certain Permanent Works must be designed by the Contractor, the Contractor must proceed with the design of these Permanent Works and must submit such design for the approval of the Engineer.
- (2) The Contractor must submit the design referred to in Clause 6.1(1) within a reasonable time
  - (a) to allow the Engineer to assess and check the design; and
  - (b) so that the planning and construction of these Permanent Works and all other related and associated works will not be affected or delayed.
- (3) The Contractor must not proceed with the construction of these Permanent Works unless approval to the Contractor's design is obtained from the Engineer.
- (4) The Engineer may discuss with the Contractor on aspects of the design and instruct that the design be amended or revised. Notwithstanding this, the Engineer must approve the Contractor's design within 21 days of its submission and receipt by the Engineer unless the Engineer has before that instructed for amendments and revisions to be made to the design.
- (5) The design submission of the Contractor must include the following:
  - (a) drawings or sketches or a combination of both;
  - (b) specifications;
  - (c) calculations; and
  - (d) any other such information as may be necessary and required for the Engineer to assess the suitability, adequacy, integrity and safety of the design.
- (6) Where practical or required, the Contractor's design submission must also include operation and maintenance manuals. These manuals must be in sufficient details to enable the Employer to operate, maintain, dismantle, reassemble and adjust the Permanent Works incorporating the design.
- (7) All designs submitted by the Contractor must be formally endorsed by a Professional Engineer registered with Lembaga Jurutera Malaysia in the discipline which relates to the designs.

**6.2 Amendment or Modification of Contractor's Design on Permanent Works**

- (1) The Contractor may, with the written consent of the Engineer, amend or modify the design of the Permanent Works which the Engineer has earlier approved under Clause 6.1(4).
- (2) If the amendment or modification of the design in Clause 6.2(1) results in extra costs and expenses incurred by the Contractor, such costs and expenses are to be solely borne by the Contractor.
- (3) If however there are any savings, these savings must be shared equally between the Employer and the Contractor. The amount of the savings must be agreed between the Engineer and the Contractor before the Engineer gives his approval to the amended or modified design.

- (4) The Employer may set-off from any payments due to the Contractor the savings which are

agreed in

writing between the Engineer and the Contractor in Clause 6.2(3).

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- (5) The Contractor's amended or modified design must be approved by the Engineer and Clauses 6.1(2) to (7) are applicable to this amended or modified design.

### **6.3 Temporary Works Designed by Contractor**

- (1) The Contractor must at his own expense design the Temporary Works. The design of these Temporary Works must be approved by the Engineer.
- (2) The provisions of Clauses 6.1 (2) - (5) inclusive and Clause 6.1(7) which govern the design of the Permanent Works also govern the design and, when the Contractor chooses, the amended or modified design, of the Temporary Works.

### **6.4 Delay in Approving Design**

- (1) If the Engineer has delayed the approval of the design submitted by the Contractor under Clauses 6.1 or 6.3 and the Contractor incurs delay in meeting the Date for Completion and additional Costs as a direct consequence,
- (a) the Engineer must take the delay into consideration in determining any extended Date for Completion to which the Contractor may be entitled under Clause 44; and
- (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.

### **6.5 Responsibility Unaffected by Approval**

- (1) The Contractor retains at all times responsibility with respect to his designs of both the Permanent Works and the Temporary Works. Any approval given by the Engineer under Clause 6.1(4) will not relieve the Contractor of this responsibility.
- (2) Any approval given by the Engineer under the Clause 6.1(4) above must not be used as a ground to limit the Engineer's authority to instruct variations to the Works under Clause 51 even if such variations may require changes to the Temporary Works which have already been approved.
- (3) Further to Clause 6.5(2), if the instructed variation requires changes to the Temporary Works, the Contractor may include in his valuation of the variation instructed the value of the works necessitated by the changes to the Temporary Works.

### **6.6 Intellectual Property Rights**

- (1) The Contractor retains intellectual property rights to all designs submitted by the Contractor to the Engineer but the Contractor irrevocably grants to the Employer licence to use such rights for all matters relating to the Works.
- (2) It is a condition of the Contract that for all designs submitted by the Contractor, the Contractor undertakes that the designs must not infringe any pre-existing intellectual property rights belonging to any third party. The Contractor further indemnifies the Employer and the Engineer against any actions, damages, claims and others for any infringement of any intellectual property rights belonging to a third party.
- (3) The intellectual property rights referred to in this Clause include patent rights, trademarks, copyrights and any other protected rights.

## **7 EMPLOYER'S GENERAL OBLIGATIONS**

### **7.1 Employer's General Obligations**

- (1) The following are the Employer's general obligations under this Contract:
- accordance .
- (a) The Employer must give the right of access to and possession of the Site in with Clause 11.
- (b) The Employer must ensure that the land use of the Site has been correctly categorised and approved for the Works.
- (c) The Employer must obtain development or planning approvals including

where applicable building plan approval and such other necessary approvals from the relevant statutory



authorities or service providers relating to the Works. These approvals must be obtained before the Date for Commencement.

- (d) The Employer must not obstruct nor interfere the Contractor's performance of the Contract unless such obstruction or interference is provided for in the Contract.
  - (e) The Employer must not interfere, influence or obstruct the Engineer in his certification duties under the Contract.
  - (f) ' The Employer must appoint another Engineer if the Engineer dies or for any reason cannot function as the Engineer under the Contract Such appointment must be made within 30 days of the Engineer's death or his inability to function as the Engineer under the Contract.
- (2) The Engineer appointed by the Employer under Clause 7.1(1)(f) must not overrule the decisions and the certifications of the former Engineer.
  - (3) The Employer's general obligations listed in Clauses 7.1 (a) to (f) (inclusive) must not be taken to limit the obligations of the Employer both under the Contract and in law.

## **8 CONTRACTOR'S GENERAL OBLIGATIONS**

### **8.1 Contractor's General Obligations**

- (1) The Contractor must, with due care and diligence,
  - (a) design the Works to the extent required by the Contract;
  - (b) set out, construct and complete the Works; and
  - (c) remedy all defectsin accordance with the provisions of the Contract.
- (2) In fulfilling his obligations set out in Clause 8.1(1), the Contractor must fully provide
  - (a) management and technical know-how;
  - (b) supervision;
  - (c) labour;
  - (d) Constructional Plant and Equipment;
  - (e) materials and goods;and all other things whether of a temporary or permanent nature as he may require.
- (3) The Contractor must at all times be fully responsible and take all measures to ensure and maintain the adequacy, stability and safety of all operations on Site.
- (4) The Contractor's general obligations listed in Clauses 8.1 (1) to (3) (inclusive) must not be taken to limit the obligations of the Contractor both under the Contract and in law.

## **9 NOTICES**

### **9.1 Notices**

- (1) Notices to either the Employer or the Contractor must be served to the respective address stated in the Articles of Agreement.
- (2) The Employer or the Contractor may amend the address stated in the Articles of Agreement and the amendment can only take effect after the notice of the change is received by the other party.
- (3) Unless there are express provisions relating to a particular mode of serving notices, notices can be served in either of the following manners:
  - (a) by hand delivery to the authorised representative of the Employer or the Contractor or his Site Manager (in the case of the Contractor) with the receiving person acknowledging receipt;
  - (b) by courier to the address stated in the Articles of Agreement and with the acknowledgement receipt obtained; or

(c) by AR Registered Post to the address stated in the Articles of Agreement

## **10 PERFORMANCE SECURITY**

### **10.1 Submission of Performance Security**

- (1) If it is a requirement under the Contract that the Contractor must provide a performance security, the Contractor must obtain and provide to the Employer such security within 14 days of the Date for Commencement or an extended date as the Employer may agree to in writing.
- (2) The performance security must be in the form of a guarantee or bond.
- (3) The performance security must be in the amount equivalent to the percentage of the Contract Sum stated in the Letter of Acceptance or Appendix to these Conditions.
- (4) The Contractor must at the same time of the submission of the performance security to the Employer also provide to the Engineer with a certified true copy of the performance security submitted.
- (5) If the Contractor fails or is unable to produce the performance security, then the Employer may retain any payment due to the Contractor under the Contract to the amount required of the ' performance security.
- (6) Both the Employer and the Contractor agree that the arbitrator appointed under Clause 63.2 of these Conditions will have the jurisdiction on all matters related to the performance security to the extent allowed by Arbitration Act 2005.

### **10.2 Requirements of Performance Security**

- (1) The performance security mentioned in Clause 10.1 must satisfy the following requirements:
  - (a) It must be substantially in the form and content as per the Proforma of Performance Bond of IEM Form of Contract for Civil Engineering Works or in such other form and content as may be agreed between the Employer and the Contractor.
  - (b) It must be issued by a bank or other financial institution approved by the Employer.
  - (c) It must be valid at all times until the Date for Completion or any extension of date.
- (2) The performance security must be provided at the expense of the Contractor.

### **10.3 Extension of Validity**

- (1) If it appears that the Contractor will not be able to complete the Works by the Date for Completion, the Contractor must extend the validity of the performance security such that he fulfils his obligation under Clause 10.2(1 )(c).
- (2) The extension of the validity of the performance security mentioned in Clause 10.3(1) must be effected at least 30 days before the expiry of the submitted performance security.
- (3) The costs involved in extending such performance security may be recovered by the Contractor as Costs under Clause 53 of these Conditions if the delay to the Completion is not due to the acts or omissions of the Contractor.

### **10.4 Call on Performance Security**

- (1) Before the Employer can make a claim under the performance security, the Engineer must have already issued the Certificate of Default.
- (2) All claims or calls to the bank or financial institution by the Employer on the performance security . must be accompanied by the Certificate of Default.

the performance security.

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**10.5 Use of the Proceeds of the Performance Security**

- (1) The Employer may use such amount of the proceeds of the performance security to set-off any costs, damages or losses which he may have suffered as a direct consequence of the Contractor's fundamental breach or breaches of the Contract for which the Engineer has issued the Certificate of Default.
- (2) If there is any balance amount remaining of the proceeds of the performance security after the setoff mentioned in Clause 10.5(1), such balance must be to the account of the Contractor and the Contractor must be reimbursed accordingly.

**11 THE SITE**

**11.1 Possession of the Site**

- (1) The Contractor must not use the Site or any part of it for any purpose or activity not connected with the Works.
- (2) Possession of the Site by the Contractor must not be taken to be for the sole and exclusive use of the Contractor. Such possession of the Site granted by the Employer to the Contractor constitutes nothing more than a revocable licence granted, where it is legally possible so to do, by the Employer to the Contractor. ■'
- (3) In that part of the Site not legally owned by the Employer or to which other person or persons not connected with the Works can have continual access and use, the Contractor is deemed to have been granted the possession of that part of the Site at the Date for Commencement provided that
  - (a) the relevant local, state or federal authorities have agreed to their use for the purposes of the Works; and
  - (b) the Contractor must ensure the continual access and use of this part of the Site by those persons not connected with the Works.

**11.2 Designated Site**

- (1) The Contractor may request the Engineer's approval to designate any land adjacent to, or in the vicinity of the Site as forming part of the Site.
- (2) The Engineer may, before giving his approval to the Contractor's request, require such undertakings from the Contractor as the circumstances of the Contractor's request or the status of the land may require.
- (3) The Engineer retains the absolute discretion in giving, withholding or revoking any approval to the Contractor's request under Clause 11.2(1).

**11.3 Contractor to Keep Site Clear**

- (1) The Contractor must keep the Site free from all unnecessary obstructions during the execution of the Works.
- (2) The Contractor must remove from the Site any materials and Temporary Works which are no longer required for the Works together with rubbish and any other unwanted materials.
- (3) In removing any rubbish or unwanted materials from the Site, the Contractor must keep the Engineer informed of the location, ownership and other details of the dumping grounds where the rubbish or unwanted materials will be dumped.

**11.4 Inspection of the Site**

- (1) If the Site has been made available to the Contractor for any reasonable period for his inspection and examination before his submission of the Tender, then it is a condition of the Contract that the Contractor has satisfied himself as to the following information and conditions about the Site:
  - (a) the form and nature of the Site including existing ground levels;
  - (b) the form and nature of the subsurface conditions;
  - (c) the hydrological conditions of the Site;
  - (d) the climatic conditions of the Site;



- (e) the means and access to the Site;
  - (f) the locations and routes of the existing services, mains or other utilities;
  - (g) the existence of any vegetation or foliage;
  - (h) the risk of injury or damage to property within, adjacent to or in the vicinity of the Site or to the occupier of such property; and
  - (i) the availability of labour, energy sources, materials and others necessary for the construction and completion of the Works.
- (j) Other than the provisions of Clause 11.4(1), it is also a condition of this Contract that the Contractor has consulted, inspected and obtained all published data regarding the information of the Site and the construction of any works on the Site.
- (k) The Employer and the Engineer are not bound and are under no obligation to provide any information, data or details about the Site to the Contractor. If any such information, data or details are given to the Contractor, either before or after the submission of the Tender, this must not be taken as relieving the Contractor of his obligations stated in Clauses 11.4(1) and (2).
- (l) The information, data or details referred to in Clause 11.4(3) include those provided
- (a) by the Employer, the Engineer or their employees; and
  - (b) in the Contract Documents

and the Employer and the Engineer do not warrant the accuracy or the correctness of the information, data or details so provided and the Contractor is duty bound to independently verify the same.

## **12 SUFFICIENCY OF TENDER AND ADVERSE PHYSICAL CONDITIONS**

### **12.1 Sufficiency of Tender**

- (1) The Contractor must satisfy himself as to the correctness and sufficiency of the Tender including the rates and prices in the Bills of Quantities. The Contractor must also ensure that the Contract Sum covers all his obligations under the Contract
- (2) The Contractor must ensure that the Contract Sum has taken into consideration the extent and nature of the works and materials necessary for the construction and completion of the Works and the making good of any defects.

### **12.2 Adverse Physical Conditions**

- (1) If the Contractor encounters any conditions about the Site (other than climatic conditions) which have directly or indirectly caused the delay of the Works beyond the Date for Completion, and the Contractor has incurred Costs as a consequence,
  - (a) the Engineer must take the delay into consideration in determining any extended Date for Completion to which the Contractor may be entitled under Clause 44; and
  - (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.
- (2) The conditions referred to in Clause 12.2(1) above include the conditions listed in Clause 11.4(1) for which the Contractor could not have anticipated given the time available in preparing his Tender and the nature of the conditions encountered in relation to the Works.

### **12.3 Taxes and Custom Duties**

- (1) The Contractor must pay all taxes which are payable under Malaysian laws including the payment of any service tax to any specialist designers whom he employs.

## **13 WORKS TO BE IN ACCORDANCE WITH CONTRACT**

### **13.1 Works to be in Accordance with Contract**

- (1) The Contractor must construct and complete the Works and make good any defects in the Works in accordance with the Contract unless it is legally or physically impossible to do so.

- (2) The legal or physical impossibility referred to in Clause 13.1(1) includes any initial or supervening impossibility.
- (3) If the legal or physical impossibility is of interim or temporary in nature not exceeding 90 days, then such legal or physical impossibility is to be treated as if the Works have been suspended in accordance with the provisions of Clause 42. In such a case the Contractor's entitlements are also in accordance with those stated in Clause 42. ,

### **13.2 Contractor to Comply with Engineer's Instructions**

- (1) The Contractor must comply with and adhere strictly to all Engineer's instructions touching or concerning the Works which are properly issued in accordance with the Contract
- (2) The Contractor must take instructions only from the Engineer or where the Engineer's Representative is so delegated with the relevant authorities, from the Engineer's Representative.

## **14 CONTRACTOR'S SUBMISSIONS**

### **14.1 Documents to be Submitted**

- (1) The Contractor must submit to the Engineer the following documents (collectively, "Contractor's Submissions") within 14 days of the Letter of Acceptance, or any extended time approved by the Engineer:
  - (a) an overall construction program ("Master Program") showing the construction and completion of the Works on or before the Date for Completion;
  - (b) a general method statement ("General Method Statement") of the Works;
  - (c) an organisation chart ("Organisation Chart");
  - (d) 'S' curves ("S Curves") showing respectively the planned financial and physical progress of the Works;
  - (e) a plant utilisation program ("Plant Utilisation Program"); and
  - (f) a forecast of the labour requirements ("Labour Forecast").
- (2) None of the Contractor's Submissions is a Contract Document. This provision continues to apply even if any of the Contractor's Submissions are bound together with other documents forming the Contract and referred to as such.

### **14.2 The Master Program**

- (1) The Master Program prepared and submitted by the Contractor must
  - (a) be in such form as the Engineer may reasonably require;
  - (b) be in sufficient details as the nature of the Works requires; and
  - (c) identify or highlight any construction activities which are critical to the completion of the Works including where applicable the float time of those non-critical activities.
- (2) The Master Program must also indicate the rate of construction of major activities of the Works ' which are reasonably required by the Engineer.
- (3) The Engineer may require amendments to be made to the Master Program submitted by the Contractor and instruct for its re-submission if there are errors, inconsistencies and incoherence within the Master Program.
- (4) If the Engineer is of the opinion that the actual progress of the Works does not conform to the Master Program, the Engineer may instruct for revision to be made to the Master Program. The Contractor must produce a revision to the Master Programme within 14 days he is issued with a Certificate of Extended Date for Completion under Clause 44.3(3).
- (5) The revised Master Program must

- (a) indicate that it is a revised Master Program with the appropriate revision number; and j.
  - (b) take into consideration the progress of the Works and the Works remain to be completed under the Contract r
- (6) If it is practical and when the Engineer so instructs, the Contractor must prepare programs of shorter T  
duration in any particular period in greater details and which amplify the activities indicated on the -  
Master Program in that period.

#### **14.3 General Method Statement**

- (1) The General Method Statement must generally describe the arrangement, sequence and method of construction of the Works, or major items which comprise the Works. x- L
  - (2) The General Method Statement must also indicate, but not necessarily limit to, t ,
    - (a) the manpower; J
    - (b) machinery and equipment; 1
    - (c) materials; and | J
    - (d) methodology .
- to be employed by the Contractor to construct and complete the Works, or the major items which T  
comprise the Works as the case may be. £ J

#### **14.4 Organisation Chart**

- (1) The Organisation Chart must indicate the Contractor's personnel involved in the Works in descending order of seniority and the line of communication or reporting to the most junior level of supervisory staff on Site.
- (2) The Contractor undertakes to update the Organisation Chart if there are any changes to its personnel ' involved in the Works .and to submit a copy of such updated Organisation Chart to the Engineer.

#### **14.5 'S' Curves**

- (1) The 'S' curves prepared for both the scheduled financial progress and scheduled physical progress of the Works must reflect the sequence and timing of the activities or work items indicated on the Master Program.
- (2) The Contractor must discuss and agree with the Engineer on the assumptions made and the method of preparing the 'S' curves prior to their submission to the Engineer.
- (3) The Engineer may use the 'S' curves as a means of monitoring the progress of the Works.

#### **14.6 Plant Utilisation Program**

- (1) The Plant Utilisation Program must indicate the number, type, model, rated capacity and make of the plant and equipment to be used by the Contractor in the construction and completion of the Works.
- (2) The Plant Utilisation Program must also have indication if the plant and equipment indicated is absolutely owned or hired by the Contractor.
- (3) In preparing the Plant Utilisation Program, the Contractor must take into consideration the sequence, duration and type of activities indicated on the Master Program.

#### **14.7 Labour Forecast**

- (1) The Labour Forecast must generally indicate the category and number of the various staff and labour (skilled, semi-skilled and un-skilled personnel) required for the construction and completion . of the Works in accordance with the Master Program.

#### **14.8 Monthly Report**

- (1) Before the seventh day of each month, the Contractor must prepare and submit to the Engineer a monthly report ("Monthly Report") showing the progress and .financial status of the Works of the preceding month.



- (2) The Monthly Report must incorporate the following documents and information:

- (a) salient features of the Works;
- (b) the 'S' Curves with the corresponding actual physical and financial progress indicated;
- (c) weather report;
- (d) plant utilisation;
- (e) manpower and labour returns;
- (f) major items of the Works completed;
- (g) a listing of all instructions issued; and
- (h) such other information and details as the Engineer may reasonably require.

#### **14.9 Contractor not Relieved of Duties**

- (1) The submission to and any comments by the Engineer of any of the Contractor's Submissions and the Monthly Report do not relieve the Contractor of any of his duties under the Contract.
- (2) The contents and information in the Contractor's Submissions and Monthly Report, including any revisions made to those submissions, do not constitute any notices which the Contractor is required to serve under any provisions of the Contract

#### **14.10 Contractor to Make Revisions**

- (1) The Contractor must promptly make any revision to the 'S' Curves, the Plant Utilisation Program and the Labour Forecast if and when a revision or update is made to the Master Program.
- (2) The provision of Clause 14.10(1) applies irrespective if the revision or update of the Master Program is initiated by the Contractor or is instructed by the Engineer.

### **15 SITE ADMINISTRATION**

#### **15.1 Contractor's Supervision**

- (1) The Contractor must provide all necessary supervision during the construction of the Works and also as long as the Engineer may consider it necessary for the proper performance of the Contractor's obligations under the Contract
- (2) The Contractor must provide and employ on the Site only such skilled and experienced technical personnel who are competent to give proper supervision of the Works.

#### **15.2 The Site Manager**

- (1) The Contractor must designate a competent representative who must be on site full time for the supervision of the Works. This representative of the Contractor may be referred to on Site, in all correspondences and in these Conditions as the Site Manager.
- (2) The Site Manager is authorised by the Contractor to receive on his behalf all instructions from the Engineer and any instruction received by the Site Manager is an instruction issued to the Contractor,
- (3) The Site Manager must be approved by the Engineer. If the Engineer does not approve the Contractor's choice of the Site Manager, or at anytime after having given approval revoke the approval, he must state his reasons for doing so. The non- approval or the revoking of any approval must not be unreasonable.
- (4) The Site Manager must be proficient in the English Language or Bahasa Malaysia.
- (5) If the approval of the Site Manager is revoked by the Engineer, the Contractor must, as soon as practicable, remove the Site Manager from the Site and replace him by another representative approved by the Engineer,

#### **15.3 The Contractor's Employees**

- (1) The Contractor must provide and employ on the Site only suitably skilled and experienced, semiskilled and unskilled labour which are necessary for the construction and completion of the Works and to make good any defects to the Works.

- (2) The Engineer has the power to object to and require the Contractor to remove from the Site any of the Contractor's employees and the Contractor must remove or cause to be removed these employees from the Site.
- (3) The Engineer can only exercise the power referred to in Clause 15.3(2) if the Engineer finds that the Contractor's employee who is sought to be removed from Site
  - (a) has misconducted himself; or
  - (b) is incompetent or negligent in the performance of his dutiesand such misconduct, incompetence or negligence has caused an adverse and negative impact upon the Works.
- (4) The Contractor must ensure that any person who has been removed under Clause 15.3(2) is not allowed to be involved in the Works without the approval of the Engineer.'
- (5) If the Contractor replaces or substitutes the person so removed, such replacement or substitution is entirely at the Contractor's own costs and expenses.
- (6) The Contractor must ensure that all his personnel on Site must be Malaysian citizens or those who are in possession of valid working permits if they are foreigners.

#### **15.4 Days and Hours of Working**

- (1) The Contractor must not carry out any construction works at night or on public holidays unless prior approval is obtained from the Engineer. The Engineer must not unreasonably withhold any such approval.
- (2) The restriction of working days and hours does not apply if there is situation such that the works to be carried out at night or on public holidays are
  - (a) unavoidable or necessary for the saving of life or property;
  - (b) unavoidable or necessary for the safety of the Works; or
  - (c) by their nature require to be executed in multiple or continuous shifts.In such an instance, the Contractor must inform the Engineer of his actions at the earliest possible opportunity.
- (3) The Contractor must assume all responsibilities if the Engineer grants approval to work at night or on public holidays. The Contractor must comply with all relevant requirements imposed by relevant authorities and the cost of such compliance must be solely borne by the Contractor.
- (4) For the purpose of this Clause 15.4,
  - (a) "night" means the time from 8.00 p.m. to 8.00 a.m.; and
  - (b) "public holiday" means the gazetted public holidays in the State where the Works are constructed in addition to any public holidays as may be gazetted by the Malaysian Government.

### **16 SUPPLEMENTARY SOIL INVESTIGATION**

#### **16.1 Additional Boreholes**

- (1) If the Engineer considers at any time during the execution of the Works that additional soil data are required, the Engineer may instruct the Contractor to drill boreholes or to carry out exploratory excavation.
- (2) The Contractor is entitled to be paid for the carrying out of such boreholes or exploratory works by way of Dayworks under Clause 52.5 unless an item or a Provisional Sum in respect of such work is already included in the Bills of Quantities.

**17.1 Accurate Setting Out**

- (1) The Contractor must
  - (a) accurately and correctly set out the Works;
  - (b) ensure the correctness of the positions, levels, dimensions, and alignment of all parts of the Works; and
  - (c) provide all necessary instruments, equipment, apparatus, labour and suitably qualified or experienced surveyors and survey technicians in fulfilling his obligations in (a) and (b) above.
- (2) The Contractor must also ensure that he has all the original reference points, lines and levels which are necessary for him to commence the setting out works.
- (3) If the Contractor considers that he does not possess all the original reference points, lines and levels mentioned in Clause 17.1(2), he must immediately notify the Engineer in writing for the details to be provided.
- (4) Upon the receipt of the notice from the Contractor under Clause 17.1 (3), the Engineer must within 7 days furnish to the Contractor the necessary information in writing if he considers that the information is necessary for the Contractor to begin the setting out of the Works.
- (5) If the Engineer delays in providing the information required for the Contractor to begin the setting out of the Works and such delay has contributed to the delay of the Contractor to complete the Works before the Date for Completion and the Contractor incurs Costs as a consequence, then
  - (a) the Engineer must take the delay into consideration in determining any extended Date for Completion to which the Contractor may be entitled under Clause 44; and
  - (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.
- (6) The Contractor must not be held responsible if any error or inaccuracy in setting out is due to the incorrect or inaccurate original reference points, lines and levels provided by the Engineer. In this case, the Contractor is to be treated as if he had been delayed in being given the necessary information and details and Clause 17.1(5) accordingly applies.

**17.2 Errors in Setting Out**

- (1) The Contractor must make good any error in the positions, levels, dimensions or alignment of the Works irrespective of the cause of such error.
- (2) If the cause of such error is a direct consequence of wrong data or information provided by the Engineer in writing or in the Drawings, and such errors cause the delay of the Works beyond the Date for Completion and the Contractor incurs Costs, then
  - (a) the Engineer must take the delay into consideration in determining any extended Date for Completion to which the Contractor may be entitled under Clause 44; and
  - (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.
- (3) If however the cause of the error is a direct consequence of the Contractor's own negligence or any other failings, then the Contractor is solely responsible for the time and cost implications of the making good of any such error.

**17.3 Approval of Setting Out**

- (1) The Contractor must make good any setting out of the Works which are checked and approved by the Engineer but which are subsequently found to be inaccurate or incorrect
- (2) The time and cost implications of the making good of any setting out errors will be governed by either Clause 17.2(2) or Clause 17.2(3).

- (3) The Contractor must provide all the necessary assistance, apparatus and instruments for the Engineer to check the Contractor's setting out of the Works or any part of the Works.

## **18. ACCESS FOR THE ENGINEER**

### **18.1 Access for the Engineer**

- (1) The Engineer and his representatives must have at all reasonable times access to the Works and the Site. This right of access to the Engineer also applies to any place and any workshops outside the Site where works are being prepared or fabricated for incorporation into the Works or where preparatory works are being carried out in relation to the Works.
- (2) In ensuring the Engineer's right of access mentioned in Clause 18.1(1), the Contractor must do all things and provide the means of access required to facilitate such access by the Engineer.

## **19. SITE SAFETY AND SECURITY**

### **19.1 Site Safety**

- (1) The Contractor must at all times before the issue of the Certificate of Making Good Defects under Clause 48.4 ensure that
  - (a) the safety of all persons entitled to be on Site is not endangered; and
  - (b) the Site is maintained in an orderly state and in a manner that all aspects of safety are not compromised.
- (2) Notwithstanding the general obligations of the Contractor to comply with all laws, the Contractor is to comply with the provisions of
  - (a) Factories and Machinery Act 1967; and ■
  - (b) Occupational Safety and Health Act 1994or any amendments to or re-enactment of these acts of parliament. The Contractor's obligations in this clause also extend to and include all the regulations and bylaws made under these acts of parliament.
- (3) The Contractor must appoint a suitably qualified and experienced person as safety officer whose main duties are to ensure the compliance by the Contractor with all safety requirements relating to the execution of the Works.
- (4) The appointed safety officer must duly document and report all breaches of safety and accidents and injuries or death to any workmen to the Contractor who must then inform the Engineer in writing.
- (5) The Contractor must ensure that all his personnel and workers including those of his sub-contractors properly understand and comply with the provisions of this Clause.
- (6) Any costs incurred by the Contractor in ensuring the safety of the Site are deemed to be included in the Contract Sum.

### **19.2 Site Security**

- (l) The Contractor must at his own costs and expenses provide all security measures including but not limiting to all lights, guards, fencing, warning signs and watching for the protection of the Works, persons entitled to be on Site and also for the convenience of the public.
- (m) Where and when they are necessary or required, the security measures in Clause 19.2(1)
  - (a) may be instructed by the Engineer; or
  - (b) must be implemented by the Contractor if they are the requirements of any duly constituted authority including any service provider.

- (1) If the Employer requires other persons to carry out works on the Site which are not part of the Works, then the Employer must ensure that these other persons must similarly comply with the provisions of this Clause.
- (2) The Employer must also ensure that these other persons must coordinate and liaise, with the Contractor on all aspects of site safety and security.
- (3) Without limiting the general obligations in Clause 19.3(2), the Employer must also require these other persons to comply with all safety and security measures initiated and implemented by the Contractor.

## **20. CARE OF THE WORKS**

### **20.1 Care of the Works**

- (1) The Contractor must take full responsibility for the care of the Works or any Section of the Works during the period from the Date for Commencement to the date of issue of the Certificate of Completion.
- (2) For the purpose of this Clause, the Contractor's responsibility extends to include any works executed or completed by others which works the Contractor has taken over as part of the Works.
- (3) Despite the provisions of Clauses 20.1(1) and (2),
  - (a) the Contractor is not liable for the care of the Works after the issue of Certificate of Completion even though the Employer is not in occupation of the Site or has not commenced the use of the Works; and
  - (b) the Contractor continues to be responsible for the care of those outstanding works which he has undertaken to complete during the Defects Liability Period until such time the works have been completed in accordance with the Contract

### **20.2 Contractor's Responsibility to Make Good Damage or Loss**

- (1) If there is any damage or loss to the Works, or any part of the Works during the period mentioned in Clause 20.1(1), the Contractor must make good such loss or damage to the Works so that the Works conform to the requirements of the Contract.
- (2) The making good works in Clause 20.2(1) must be carried out without delay and at the Contractor's own costs and expenses.
- (3) If however the damage or loss to the Works is caused by a risk, or a combination of risks which are among the Employer's Risks listed in Clause 20.4, then the provisions of Clause 20.3 is applicable.

### **20.3 Damage or Loss Due to Employer's Risks**

- (1) If the damage or loss is caused by an Employer's Risk or a combination of such risks, the Contractor must make good such damage or loss to the extent instructed by the Engineer. The additional Costs for the making good of such risks are to be certified by the Engineer under Clause 53.
- (2) If damage or loss to the Works and their making good have caused delay to the Works beyond the Date for Completion of the Works, the Engineer must take such delay into consideration in determining any extended Date for Completion which the Contractor may be entitled under Clause 44 and certify Costs incurred which the Contractor may be entitled under Clause 53.

### **20.4 Employer's Risks**

- (1) The following are the Employer's Risks:
  - (a) war (irrespective if the war is declared or not) or hostilities, invasion and act of foreign enemies;
  - (b) acts of terrorism;



- (c) riots (other than that caused by the Contractor's own employees and those of his sub-contractors'), commotion or disorder or civil war;
- (d) any operation of the forces or nature which an experienced contractor could not have reasonably foreseen or priced for.

**N.B. \* Either of the following Clause 21A or 21B is to apply.**

## **21A INSURANCE OF WORKS\***

### **21 A. 1 Contra ctor's All Risks Insu rance Policy**

- (1) The Contractor must take out and maintain a Contractor's All Risks Insurance Policy comprising insurances against
  - (a) damage to the Works; and
  - (b) third party liability.
- (2) The Contractor's All Risks Insurance Policy must be maintained from the Date for Commencement until the issue of the Certificate of Completion by the Engineer,
- (3) (3) The Contractor's All Risks Insurance Policy must be in the joint names of the Employer, the Contractor, the Engineer and the sub-contractors.
- (4) The Contractor must insure the replacement value of the Works ("Insured Sum") which is taken to be Contract Sum less the non-Work items in the Bills of Quantities. The Insured Sum must be stated in the Appendix.
- (5) The Contractor must insure against third party liability for a sum not less than that stated in the Appendix.

### **21A.2 Principal Terms of the Contractor's AH Risks Insurance Policy**

- (1) The scope of cover of the Contractor's All Risks Insurance Policy must include damages to the Works caused by all risks which are not specifically excluded or which are not Employer's Risks.
- (2) The extensions of the Contractor's All Risks Insurance Policy against damage to the Works must include
  - (a) the costs and expenses of debris removal;
  - (b) professional fees incurred in the reinstatement of the Works; and
  - (c) overtime expenses (including night and public holiday works).
- (3) The scope of cover of the third party liability must include indemnity in respect of the legal liability of the insured parties for the following:
  - (a) accidental death or bodily injury to any person; and
  - (b) accidental loss or damage to property.
- (4) The indemnity provided and insured against must include any costs and expenses incurred in defending any claim, action or proceedings made or taken by the injured party or the owner of the injured or damaged property.

### **21 A.3 Evidence of Insurance Policy**

- (1) The Contractor must produce a certified copy of the Contractor's All Risks Insurance Policy to the Engineer before the commencement of any works on Site.
- (2) If the Contractor is not able to produce a certified copy of the Contractor's All Risks Insurance Policy, the Engineer can then accept a cover note evidencing that such an insurance policy has been effected for the purpose of the commencement of any works on Site, The Contractor must as soon as a certified copy of the policy is available forward a copy to the Employer with a copy to the Engineer.
- (3) The Contractor must produce the original or certified true copy of the original copies of the receipt of payment of the premium paid for the maintenance of the Contractor's All Risks Insurance Policy.

**21A.4 Failure to Insure**

- (1) If the Contractor fails to effect and maintain in force the Contractor's All Risks Insurance Policy within 45 days of the Date for Commencement, the Employer may then effect and maintain in force such a policy as required of the Contractor under the Contract.
- (2) Further to Clause 21A.4(1), the Employer may recover any premium paid for the effecting and maintenance of the policy mentioned from any payment due or to become due to the Contractor under the Contract
- (3) The Employer's initiative in taking out and maintaining the Contractor's All Risks Insurance Policy when the Contractor fails to do so is without prejudice to the Employer's rights under the Contract and in law.

**21 A.5 Contractor Liable for Deductibles**

- (1) Subject to the provisions of Clause 21A.6, the Contractor is fully responsible and liable for any deductibles stipulated in the Contractor's All Risks Insurance Policy unless the loss or damage is caused by the acts or omissions of either the Employer or the Engineer.
- (2) The Contractor may at his own cost and expense take out such additional insurances as he considers necessary.

**21A.6 Compliance With Policy Conditions**

- (1) In the event that the Contractor or the Employer fails to comply with any conditions imposed by the Contractor's All Risks Insurance Policy, each must indemnify the other against all losses and claims arising from such failure.
- (2) If there is any loss or damage to the Works or incident which may give rise to third party liability against the Employer, the Contractor (and his sub-contractors) or the Engineer, such damage or loss or incident must first be reported to the insurer with whom the Contractor's All Risks Insurance Policy is effected and maintained. .

**21B INSURANCE OF WORKS\***

**218.1 Employer's All Risks Insurance**

- (1) The Employer must insure in the joint names of the Employer, the Contractor, the sub-contractors and the Engineer to their respective obligations under the Contract and in law an All Risks Insurance Policy against
  - (a) damage to the Works; and
  - (b) third party liability,
- (2) The minimum period of coverage for the Employer's All Risks Insurance must commence from the Date for Commencement and such a policy must be maintained until the issue of the Certificate of Completion.
- (3) The sum insured for insurance against damage to the Works must not be less than the Insured Sum.
- (4) The sum insured against third party liability must not be less than that stated in the Appendix.
- (5) The taking out and maintenance of the Employer's All Risks Insurance Policy does not limit the Contractor's responsibility under Clauses 20 and 22 of these Conditions.

**218.2 Principal Terms of the Employer's Arranged All Risks Insurance Policy**

- (1) The scope of cover of the Employer's All Risks Insurance Policy must include damages to the Works caused by all risks which are not specifically excluded and these must include Employer's Risks. .
- (2) The extensions of the Employer's All Risks Insurance Policy against damage to the Works must include
  - (a) the costs and expenses of debris removal;



- (b) professional fees incurred in the reinstatement of the Works; and
  - (c) overtime expenses (including night and public holiday works).
- (3) The scope of cover of the third party liability must include indemnity in respect of the legal liability of the insured parties for the following:
  - (a) accidental death or bodily injury to any person; and
  - (b) accidental loss or damage to property.
- (4) The indemnity provided and insured against must include any costs and expenses incurred in defending any claim, action or proceedings made or taken by the injured party or the owner of the injured or damaged property.

### **218.3 Production of Employer's All Risks Insurance Policy**

- (1) The Employer must make a copy of the Employer's All Risks Insurance Policy available to the Contractor before the Date for Commencement.
- (2) If the Contractor is not satisfied with the terms and conditions of the Employer's All Risks Insurance Policy, the Contractor may at his own costs and expenses effect and maintain any additional or other insurance policies as he considers necessary.
- (3) If the Employer fails to effect and maintain the Employer's All Risks Insurance Policy under Clause 21B.1, the Contractor may consider that Clause 21A then applies. The Engineer must certify the additional Costs incurred by the Contractor in accordance with the provisions of Clause 53.
- (4) If the failure of the Employer in effecting the Employer's All Risks Policy has delayed the commencement of the Contractor's execution of the Works, and such delay has caused delay to the Date for Completion, the Engineer must then determine a new Date for Completion which the Contractor is entitled under Clause 44 and Costs which the Contractor is entitled under Clause 53.

### **218.4 Contractor Liable for Deductibles**

- (1) Except for losses or damages caused by Employer's Risks or for which the Employer is responsible due to his acts or omissions, the Contractor is responsible for the amount of any deductibles under the Employer's All Risks Insurance Policy.
- (2) If any losses or damages to the Works are claimable under the Employer's All Risks Insurance Policy, then the Contractor is not entitled to any payment in respect of the costs and expenses in reinstatement of the Works other than the monies received or to be received under such a policy.
- (3) Clause 21B.4(2) does not apply if the cause or causes of the losses or damages to the Works are attributable to Employer's Risks in which case the Contractor is entitled to the full amounts of monies received under the insurance policy.
- (4) If the monies received from the insurance policy are less than the costs incurred by the Contractor in the reinstatement works, the Contractor may claim for the balance as Costs under Clause 53.

### **218.5 Compliance With Policy Conditions**

- (1) The Contractor must comply and must also ensure that his sub-contractors comply with the terms and conditions of the Employer's All Risks Insurance Policy.
- (2) The Contractor must not do anything, or omit to do anything, that can render the Employer's All Risks Insurance Policy voidable or an increase in the premium payable.
- (3) The Contractor must fully comply with any notice procedures for claims and the administrative procedures for such claims under the Employer's All Risks Insurance Policy.

## **22 INDEMNITY**

### **22.1 Injury to Persons and Damage to Property**

- (1) The Contractor must indemnify and keep the Employer indemnified against all losses, expenses,

costs, damages, liability and claims in respect of

- (a) death or injury to any persons; and
- (b) loss of or damage to any personal or real property (other than the Works)

which arise out of the Contractor's execution of the Works and the making good of any defects to the Works.

- (2) The indemnity mentioned in Clause 22.1(1) does not apply in the following situations:
  - (a) the permanent use or occupation of the Works or any part of the Works by the Employer;
  - (b) the unavoidable consequence of the Contractor's execution of the Works or the making good of any defects of tire Works in accordance with the Contract;
  - (c) the act or neglect of the Employer or his agents or other contractors employed by the Employer.

## **22.2 Indemnity by the Employer**

- (1) The Employer must indemnify the Contractor against all losses, expenses, costs, damages, liability and claims in respect of the situations referred to in Clause 22.1(2).

## **22.3 Contribution**

- (1) The Contractor's liability to indemnify the Employer under Clause 22.1 is reduced in proportion to the extent that the Employer or his agents or other contractors employed by the Employer are responsible and contributed to the death or injury to the persons or loss of or damage to the property.
- (2) The indemnity given by the Contractor in Clause 22.1 must not be defeated by reason of any negligence or omission of the Employer, the Engineer or any other person for whom the Employer or the Engineer is responsible.
- (3) The negligence or omission referred to in Clause 22.3(2) above includes but is not limited to the following:
  - (a) failure of the Engineer to supervise the execution of the Works;
  - (b) failure of the Engineer to detect any defect in the Works; and
  - (c) failure of the Engineer to properly control the Contractor's site operations and methods of working.

## **22.4 Contractor to Make Good Damage to Property**

- (1) Despite the Contractor's liability to indemnify the Employer under Clause 22.1(l)(b), the Contractor must make good any damage to any property (not forming part of the Works) to the satisfaction of the Engineer or the satisfaction of legal owner of such property.
- (2) Notwithstanding any provisions of these Conditions, the Engineer has the jurisdiction to instruct the Contractor to make good any damage to any property not forming part of the Works.
- (3) If the cause of the damage to the property is caused by the negligence or omission of the Employer, the Engineer or any other person for whom the Employer or the Engineer is responsible, the proportionate costs of such making good is claimable as Costs under Clause 53.

## **22.5 Failure of Contractor to Make Good Damage to Property**

- (1) If the Contractor fails to make good any damage to property (not forming part of the Works) or fails to comply with an instruction of the Engineer issued under Clause 22.4(2), then the Employer is entitled to employ other persons to make good the damage.
- (2) The Employer may recover the costs incurred in such making good works from any monies due or to become due to the Contractor under the Contract.

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- (3) Before the Employer can set-off any monies due or to become due to the Contractor in Clause 22.5(2), the Employer must furnish to the Contractor evidence of payments to the other persons who have been employed to carry out and complete the making good works.

**23 INSURANCE FOR WORKMEN**

**23.1 SOCSO for Malaysian Workmen**

- (1) The Contractor must register and ensure that all his sub-contractors register all Malaysian workmen employed in the execution of the Works who are subject to registration under the Employees' Social Security Scheme ("SOCSO") in accordance with Employees' Social Security Act 1969 or any amendment or re-enactment of the Act.
- (2) For the purpose of this Clause, "Malaysian workmen" are those who are Malaysian citizens and those who are permanent residents of Malaysia.
- (3) The Contractor must submit the code number and the social security number of all those who are registered under SOCSO to the Engineer together with evidence of payment of the necessary contributions.
- (4) The responsibility of the Contractor to comply with the provisions of this Clause and any SOCSO's requirements extends from the Date for Commencement to the issue of Certificate of Making Good Defects.
- (5) The contractor's compliance with the provisions of this Clause is without prejudice to his responsibility to indemnify the Employer under Clause 22.1(1).

**23.2 Workmen's Compensation Insurance for Non-Malaysian Workmen**

- (1) The Contractor must take out and maintain a Workmen's Compensation Insurance Policy in the joint names of the Employer and the Contractor for all non-Malaysian workers under Workmen's Compensation Act 1952, Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order 1998 or any amendment or re-enactment of the Act or Order.
- (2) The Contractor must ensure his obligation in Clause 23.2(1) is also satisfied by his sub-contractors who have non-Malaysian workmen employed for the execution of the Works.
- (3) The Contractor must ensure that all the Workmen's Compensation Insurance Policies are maintained from the Date for Commencement to the date of the issue of Certificate of Make Good Defects under Clause 48.4.
- (4) The Contractor must place with the Employer and the Engineer each a certified copy of the Workmen's Compensation Insurance Policy or Policies.
- (5) The Contractor and/or his sub-contractors must produce certified true copies of the receipts in respect of the payment of premiums paid under such policy or policies.
- (6) The Contractor's compliance with the provisions of this Clause is without prejudice to his responsibility to indemnify the Employer under Clause 22.1(1).

**23.3 Insurance for Malaysian Workmen not subject to SOCSO**

- (1) The Contractor must take out and maintain an insurance policy in the joint names of the Employer and the Contractor (including any sub-contractors) for Malaysian workmen who are not subject to SOCSO in accordance with the requirements of Social Security Act 1969 or any amendment or reenactment of the Act.
- (2) The insurance policy in Clause 23.3(1) must be maintained from the Date for Commencement to the issue of Certificate of Make Good Defects.
- (3) (3) The Contractor must place with the Employer and the Engineer each a certified copy of the insurance policy effected under Clause 23.3(1).
- (4) The Contractor must produce certified true copies of the receipts in respect of the payment of premiums paid under such policy.

- (5) The contractor's compliance with the provisions of this Clause is without prejudice to his responsibility to indemnify the Employer under Clause 22.1(1).

#### **23.4 Defaults in Compliance**

- (1) If the Contractor does not comply with the provisions of Clauses 23.1, 23.2 and 23.3, the Employer may (without prejudice to any other rights or remedies available) pay on behalf of the Contractor such premiums or contributions as they become due and remain unpaid.
- (2) The Employer can deduct the amounts equivalent to the sum of all premiums or contributions paid on behalf of the Contractor from any payment due or to become due to the Contractor under the Contract
- (3) The Employer must produce to the Contractor before effecting the deductions in Clauses 23.4(2) receipts for the premiums or contributions as evidence of their payment by the Employer.

### **24 COMPLIANCE WITH LAWS**

#### **24.1 Contractor to Comply with Laws**

- (1) The Contractor must comply in all respects with the provisions of all written laws, regulations, orders and bylaws (collectively, "Laws") which are applicable to the Works.
- (2) Without undermining the general provision in Clause 24.1(1), the Contractor must give notices and pay all fees and charges required to be given or paid under any of the Law relating to the Works.
- (3) The charges to be paid under in Clause 24.1(2) above include the levies to be paid by the Contractor to the Construction Industry Development Board, Malaysia.
- (4) The Contractor must indemnify the Employer and keep the Employer indemnified against any breach of the provisions of the Laws.
- (5) The Contractor's obligations in this Clause extend to the compliance with all the regulations and requirements of the service providers and to pay all fees and charges required for the installation of permanent connections to the supply systems maintained by them.
- (6) The Employer must reimburse the Contractor the fees and charges paid by the Contractor under Clause 24.1 (5) as Costs under Clause 53 unless such costs have already been included in the Contract Sum and provided for in the Bills of Quantities.

#### **24.2 Employer to Obtain Planning Approval and Pay Capital Contributions**

- (1) The Employer is responsible to obtain any planning approval, zoning and other similar permissions which are required for the Works.
- (2) The Employer must pay all capital contributions and security deposits to any public authority or service provider for the installation of permanent connections to the supply systems maintained by them.
- (3) If Employer fails or delays in paying the capital contributions or security deposits in in Clause 24.2 (2) and this failure or delay has delayed the Contractor in completing the Works before the Date for Completion and the Contractor incurs Costs as a consequence, then
  - (a) the Engineer must take the delay into consideration in determining any extended Date for Completion to which the Contractor may be entitled under Clause 44; and
  - (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.

#### **24.3 Changes in Law after Submission of Tender**

- (1) If there is any change in the Laws after the Contractor has submitted his Tender and this change has
  - (a) necessitated the variation of the Works;
  - (b) required the provision of any temporary works; or



(c) the compliance of which has required (a) and (b) above;

the Contractor must, before he gives effect to such a change, write to the Engineer requiring him to issue an instruction under Clause 51.

- (2) If the amount of fees and charges required to be paid by the Contractor under any Laws is increased after the Contractor has submitted his Tender, the Contractor can then recover the increased amount as Costs under Clause 53.

## **25 PATENT RIGHTS AND ROYALTIES**

### **25.1 Patent Rights and Other Protected Rights**

- (1) The Contractor must defend and indemnify the Employer from and against all claims, costs, damages, charges and proceedings for any infringement of any patent rights, trademarks or any protected rights in respect of any Constructional Plant and Equipment, materials, goods or designs (as prepared and submitted by the Contractor) used for, in connection with or for incorporation into, the Works.
- (2) The Contractor is not responsible if the infringement of any protected rights stated in Clause 25(1) (1) is a consequence of the Contractor's execution of the Works in accordance with the Contract or in complying with an instruction of the Engineer.

### **25.2 Royalties**

- (1) The Contractor must pay all tonnage, royalties, rent and any other payments or compensation whatsoever for obtaining aggregates, sand, gravel, clay or any other materials required for the Works.
- (2) The obligation of the Contractor to pay in Clause 25.2(1) applies even if the materials are not to be incorporated into the Works.

## **26 ANTIQUITIES AND FOSSILS**

### **26.1 Ownership of Discovery**

- (1) All fossils, coins, structures, relics or articles of value or antiquity and any other remains or things of geological, historical or archaeological interests discovered on the Site belong, as between the Employer and the Contractor, to the Employer,

### **26.2 Protection of Discovery**

- (1) The Contractor must ensure that all reasonable precautions are taken so that his workmen and those of his sub-contractors' or any other persons do not remove from the Site or damage anything referred to in Clause 26.1(1).
- (2) Upon the discovery of anything referred to in Clause 26.1(1), the Contractor must immediately inform the Engineer. If the discovery is something which is of immediate danger, the Contractor must also lodge a report with the police.
- (3) The Engineer must give an instruction as to the next course of action with respect to any such discovery. If complying with such an instruction is the cause of the delay beyond the Date for Completion and the Contractor incurs additional Costs, then
- (a) the Engineer must take the delay into consideration in determining any extended Date for Completion to which the Contractor may be entitled under Clause 44; and
- (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.

## **27 ENVIRONMENTAL MANAGEMENT AND QUALITY ASSURANCE**

### **27.1 Environmental Matters**

- (1) The Contractor must fully comply with the provisions of Environmental Quality Act 1974 including any subsequent amendments to or re-enactment of this Act.

**Works** If the Employer has carried out an environmental impact assessment audit and the report of such audit is made available to the Contractor prior to the closing of the Tender, the Contractor must abide by all restrictions, provisions and conditions in the report.

- (3) In general, the Contractor is bound by all factors relating to the environmental aspects of the Works as if the Contractor is himself the Employer.
- (4) Without limiting the general provision of Clause 27.1(3), if it is a requirement of the Contract that the Contractor is to provide an environmental protection plan, the Contractor must then provide such a plan within 14 days of the Date for Commencement.
- (5) The Contractor must take all reasonable steps to protect the environment either on or off the Site. He must also avoid any damage or nuisance to the public as a consequence of his execution of the Works.
- (6) The Contractor must also carry out the Works without unreasonable noise, disturbance or pollutions.

## **27.2 Quality Plan**

- (1) If it is a requirement of the Contract that the Contractor must submit a Quality Plan, this must be submitted by the Contractor to the Engineer within 28 days of the Date for Commencement.
- (2) The Engineer may comment on the Quality Plan submitted by the Contractor and the Contractor may take into consideration the Engineer's comments and to revise the plan accordingly.
- (3) If the Employer has itself instituted certain Quality Plan and a copy of this is (or relevant details of which are) made available to the Contractor before the close of Tender, the Contractor must then as far as possible adhere to the Employer's Quality Plan (or the disclosed details of the Plan) to such an extent that the Employer will not be in breach of his own Plan.
- (4) The submission by the Contractor of any such Quality Plan, and any subsequent comments on it given by the Engineer, cannot be taken to relieve the Contractor of any of his obligations under the Contract
- (5) The Contractor must implement the quality procedures in any submitted Quality Plan and close all non-conforming reports.
- (6) The Contractor must appoint a suitably qualified and experienced person to act as Quality Officer on Site whose main duty is to ensure the compliance and smooth implementation of the Quality Plan submitted by the Contractor.

## **28 LABOUR**

### **28.1 Employment of Workmen and Labour**

- (1) The Contractor must, unless it is provided otherwise in the Contract, make his own arrangement for the employment of all labour and for their salaries or wages, accommodation, welfare, food and transport.
- (2) In there are foreigners being employed, the Contractor must at their own costs and expenses obtain valid working permits and in general ensure that all relevant laws and regulations are complied with.

### **28.2 Returns of Labour**

- (1) If required by the Engineer, the Contractor must deliver to the Engineer a detailed return showing the number of the various classes of labour from time to time employed by the Contractor on the Site.
- (2) The return required in Clause 27.2(1) must be in a form and must be submitted in the intervals as the Engineer may prescribe (if the period for their submission is not already prescribed in the Contract).





**29 INTERFERENCE WITH TRAFFIC**

**29.1 Interference with Traffic**

- (1) The Contractor must ensure that his construction operations must not unnecessarily or improperly interfere with
  - (a) the convenience of the public; or
  - (b) the access to, use and occupation of any roads irrespective whether the roads are in the possession of the Employer or any other person not connected with the Works.
- (2) The Contractor must indemnify the Employer in respect of all claims, proceedings, damages, costs, charges, and expenses arising out of the Contractor's obligations referred to in Clause 29.1(1).

**30 TRANSPORT**

**30.1 Transport of Contractor's Plant and Equipment**

- (1) The Contractor is solely responsible for the delivery and transport to Site of all Constructional Plant and Equipment, machinery and pre-constructed or pre-fabricated parts of the Works.
- (2) The responsibility in Clause 30.1(1) extends to paying any fees, charges, tolls and all costs incurred in protecting and strengthening any roads or bridges (if required).

**30.2 Avoidance of Damage to Roads**

- (1) If the Contractor requires using any roads or bridges outside the Site for its construction traffic, the Contractor must ensure that all applicable permits are first obtained.
- (2) In using the roads or bridges for its construction traffic, the Contractor must ensure that
  - (a) the roads and bridges are not damaged in any way; and
  - (b) the convenience of the public is not unnecessarily or improperly interfered with.
- (3) The Contractor must indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses irrespective of how they arise in using the roads and bridges.
- (4) For the purpose of Clause 30.2, "roads" includes highways (whether privatised or otherwise) and rivers.

**31 USE OF EXPLOSIVES**

**31.1 Use of Explosives**

- (1) The Contractor must purchase his own explosives and be responsible for the use, handling, transport, security and storage of all explosives which he requires for the execution of the Works.
- (2) No explosives of any kind can be used by the Contractor unless it is legally procured. The Contractor must follow the requirements and regulations laid down by the relevant authorities ' including but not limiting to Polis Diraja Malaysia and the Engineer in using any explosives.
- (3) The Contractor must have an experienced and licensed shotfirer on site to supervise or physically carry out the works each time explosives are to be used in connection with the Works.

**32 FACILITIES FOR OTHER CONTRACTORS**

**32.1 Opportunities for Other Contractors**

- (1) The Contractor must accord all reasonable opportunities to other contractors or the Employer's workmen who carry out works on the Site which do not form part of the Works.
- (2) The Contractor's obligation in Clause 32.1(1) extends to any authorities or service providers who may be employed to carry out works on or near the Site.

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The Contractor must work in harmony, liaise and coordinate with these other contractors or workmen and plan the execution of the Works such that the progress of the Works will not be affected by affording such opportunity.

**322 Facilities for Other Contractors**

- (1) The Contractor must give all reasonable facilities to other contractors or the Employer's workmen who carry out works which are not part of the Works.
- (2) The Engineer may, in his absolute discretion, instruct that the Contractor must make available any facilities belonging to the Contractor to other contractors or the Employer's workmen (including service providers) who execute works not forming parts of the Works.
- (3) If the Contractor incurs additional Costs in complying with Clauses 32.2(1) and (2), then the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.

**33 MATERIALS AND EQUIPMENT SUPPLIED BY EMPLOYER**

**33.1 Supply a Requirement of the Contract**

- (1) The following sub-clauses to Clause 33.1 are applicable where it is an express requirement of the Contract that certain plant, equipment or materials (collectively and severally, "Employer's Supplied Materials") required for the execution of the Works or for incorporation into the Works are to be supplied by the Employer.
- (2) The express requirement must indicate the quantities and types of the Employer's Supplied Materials to be supplied and delivered, the procedure for their delivery and receipt, the rates or prices of such Employer's Supplied Materials.
- (3) The payment terms for the Employer's Supplied Materials must correspond to that of the Period of Honouring Certificates in Clause 58.3.
- (4) The Contractor must prepare a schedule of the delivery of the Employer's Supplied Materials and the Employer must comply where applicable with the requirements of this schedule.
- (5) Despite the provision of Clause 33.1(4), the Contractor must liaise directly with the designated and authorised representative of the Employer on all the logistical aspects of the Employer's Supplied Materials including their required quantities, time and place of delivery.
- (6) The Contractor's request for the delivery of the Employer's Supplied Materials must be made in writing with a copy of such request copied to the Engineer.
- (7) The Contractor is not responsible if the Employer's Supplied Materials do not comply with the requirements of the Contract or are damaged prior to their acceptance by the Contractor.
- (8) Immediately upon receipt of Employer's Supplied Materials which do not comply with the requirements of the Contract, the Contractor must inform the Employer in writing. The Engineer must similarly be informed.
- (9) If the Employer delays in delivering the Employer's Supplied Materials to the Contractor and this has resulted delay to the completion of the Works, then
  - (a) the Engineer must take the delay into consideration in determining any extended Date for Completion to which the Contractor may be entitled under Clause 44; and
  - (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.
- (10) The Employer must remove from the Site at his own costs if any Employer's Supplied Materials delivered to the Site are not in compliance with the requirements of the Contract or which are damaged before their acceptance by the Contractor.
- (11) The Contractor must accord all reasonable opportunities including access within the Site for the delivery of the Employer's Supplied Materials to their designated locations.



- (12) All deliveries of the Employer's Supplied Materials must be accompanied by delivery orders and the delivery orders must be acknowledged and signed by the Contractor's authorised representative upon his receipt of the deliveries.
- (13) The Employer must agree with the Contractor and submit his claim for all payments for the supply and delivery of the Employer's Supplied Materials to the Engineer with a copy to the Contractor in the same manner the Contractor prepares and submits his Interim Payment Application in accordance with Clause 58.
- (14) The Employer's Supplied Materials remain at all times the property of the Employer and these must not be removed from the Site without the written permission of the Employer.
- (15) Except for the provisions in this Clause 33.1 with respect to Employer's Supplied Materials, the Contractor is not relieved from any of his duties and responsibilities under the Contract.

**33.2 ■ Separate Supply Agreement between the Employer and the Contractor**

- (1) The following sub-clauses to Clause 33.2 are applicable where the Contractor has a separate agreement with the Employer for the delivery of any plant, equipment or materials (collectively and severally, "Contractor's Requested Materials") which the Contractor requires for the execution of the Works or for incorporation into the Works.
- (2) All aspects of the delivery and supply of the Contractor's Requested Materials by the Employer are treated in the same manner as if the Contractor is making his own arrangement to secure the supply and delivery of these Contractor's Requested Materials.
- (3) The Employer may deduct from any payment due or to become due to the Contractor under the Contract for the supply and delivery of these Contractor's Requested Materials only on such terms and rates as may have been agreed between the Employer and the Contractor.
- (4) The Employer must produce copies all delivery orders of the Contractor's Requested Materials which are duly signed receipt by the Contractor's authorised and designated representative as evidence of the supply and delivery of the Contractor's Requested Materials before the Employer<sup>1</sup> can effect any deduction of any payment due or to become due to the Contractor.

**34 OWNERSHIP OF EXCAVATED MATERIALS**

**34.1 Ownership of Excavated Materials**

- (1) All materials or things of any kind obtained from excavations or found on or beneath the Site belong, between the Employer and the Contractor, to the Employer.
- (2) The Contractor may use the materials excavated if they are suitable and comply with the requirements of the Contract.

**34.2 Disposal of Excavated Materials**

- (1) The Contractor must obtain the written approval of the Engineer if he wants to dispose any the excavated materials from the Site.
- (2) The approval of the Engineer given under Clause 34.2(1) does not relieve the Contractor from any of his responsibilities under the Contract.

**35 CLEARANCE OF SITE**

**35.1 Clearance of Site on Completion**

- (1) On the completion of the Works, the Contractor must clear and remove from the Site all surplus materials, rubbish and Temporary Works of any kind. The Contractor must generally leave the whole of the Site and the Permanent Works clean to the satisfaction of the Engineer.

**35.2 Clearance of Site on Expiry of Defects Liability Period**

- (1) The Contractor may retain certain equipment, materials and Temporary Works which are required by the Contractor in fulfilling his obligations during the Defects Liability Period.

**For Civil Engineering Works** 35.2(1), the Engineer may instruct and designate locations within the Site for the storage of the Contractor's equipment, materials and Temporary Works. This storage must not impair or obstruct the functional use of the Permanent Works.

### **36 MATERIALS AND WORKMANSHIP**

#### **36.1 Quality of Materials and Workmanship**

- (1) All the materials for incorporation into the Permanent Works and workmanship must be
  - (a) of the kind described or specified in the Contract;
  - (b) in accordance with the Engineer's instructions; and
  - (c) subjected to such tests as the Engineer may require.
- (2) The tests referred to in Clause 36.1(c) may be carried out at the place of manufacture, fabrication or preparation or on the Site.
- (3) The Contractor must provide all assistance in the form of provision of the instruments, machines, labour and materials which are normally required for examining, measuring and testing of the materials.

#### **36.2 Supply of Samples**

- (1) The Contractor must supply samples of any materials for testing by the Engineer before their incorporation into the Works.
- (2) Unless the Engineer decides otherwise, the samples must be taken in the presence or under the supervision of the Engineer.
- (3) The Engineer may decide on the selection of the samples and frequency for their testing if such frequency is not already provided for in the Specifications.
- (4) Except for the provision of Clause 16, all samples must be supplied by the Contractor at his own cost

#### **36.3 Tests**

- (1) The Contractor must at his own cost carry out all tests which are provided for in the Specification or which are intended by the Contract.
- (2) Before carry out the tests in Clause 36.3(1), the Contractor must give reasonable notice to the Engineer to enable him to attend.
- (3) The tests must be carried out under the supervision or in the presence of the Engineer.
- (4) The Contractor must keep a complete record of all tests carried out and their results. The test records must be duly signed by the personnel who carry out the tests and these must also be signed by the Engineer's representative who witnesses the tests.
- (5) The format of the records of test results must be approved by the Engineer.
- (6) The signing of the test results in Clause 36.3(4) by any representative of the Engineer does not imply the Engineer's acceptance of the materials or workmanship.
- (7) The Engineer may instruct tests to be carried out even if the tests are not provided for or are not clearly intended by the Contract. In this case, the Contractor is entitled to treat the tests as variation to the Contract under Clause 51.
- (8) If however the tests in Clause 36.3(7) reveal that the materials or workmanship fail to comply with the provisions of the Contract, then the Contractor must bear the cost for the carrying out of the tests. The Contractor must also bear the costs of any additional tests required as a consequence of this failure.
- (9) The provisions of Clause 36.3 do not apply to tests to determine the load bearing capacity of piles; these tests must be itemised in the Bills of Quantities.

**37 EXAMINATION OF WORKS BEFORE COVERING UP**

**37.1 Examination of Works**

- (1) The Contractor must not cover up any Works or part of the Works without first giving the Engineer a reasonable opportunity to inspect them. The Contractor must also give reasonable notice to the Engineer when any works are ready for examination and inspection before they are to be covered up.
- (2) For the purpose of this clause, the notice is reasonable when
  - (a) it has specified the works which are to be inspected and which are to be covered up; and
  - (b) it has given the Engineer sufficient time to inspect the works.
- (3) The Engineer must inspect the work specified in the notice without unreasonable delay unless he informs the Contractor in writing that the inspection of the works specified will not be necessary.
- (4) The Engineer may instruct for any works so covered up in breach of Clause 37(1) to be opened up for his inspection. Any cost so incurred as a consequence of the Engineer so instructs is to be fully borne by the Contractor irrespective if the Engineer subsequently accepts or rejects the works inspected.

**37.2 Uncovering of Works**

- (1) Despite the provisions of Clause 37.1, the Engineer may from time to time before the expiry of Defects Liability Period instruct the Contractor to uncover any part or parts of the Works which have been covered up or to make opening in or through them.
- (2) Any such instruction given to the Contractor in Clause 37(1) is deemed to be inclusive of the reinstatement works after the uncovering or opening up of the works.
- (3) If any part or part of the Works are found to be not in accordance with the Contract upon being discovered subsequent to the instruction given under Clause 37.2(1), the Contractor must then fully bear the cost of the opening up or making opening, reinstatement works as well as the removal and re-construction of the works concerned.
- (4) If however the works are found to be in compliance with the requirements of the Contract, the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.

**38 REMOVAL OF REJECTED WORKS**

**38.1 Removal of Rejected Works or Materials**

- (1) The Engineer has the authority before the Date for Completion to instruct the removal from the Site of **any Works or materials if they are not in accordance with the requirements of the Contract**.
- (2) **The Engineer's instruction given under Clause 38.1(1) may include the proper substitution or replacement of the works.**
- (3) **The authority of the Engineer in Clause 38(1) extends to those works constructed in accordance with the designs which the Contractor is responsible,**
- (4) **In exercising his authority under Clause 38.1(1), the Engineer must at the same time notify the Contractor the reasons and the requirements of the Contract which have been breached.**
- (5) **The failure of the Engineer to disapprove any works must not be construed as the Engineer waiving his authority to subsequently exercise the power in Clause 38.1(1).**

**38.2 Defaults in Removal**

- (1) **If the Contractor fails to comply with the instruction which the Engineer has properly given in accordance with Clause 38.1, and after the Engineer has given due notice to the Contractor,**
  - (a) the Employer or the Engineer on his behalf is entitled to engage a third party to carry out the instruction given by the Engineer;

- ~~(b) the Engineer must determine the costs consequent or incidental to the carrying out of the instruction, such determination must be notified to both the Employer and the Contractor;~~
- (c) the Employer may thereafter deduct or set-off from any monies due or to become due to the Contractor the amount so determined by the Engineer.

### **383 Contractor's Proposal**

- (1) The Contractor may submit proposal or alternative relating to the subject matter of the Engineer's instruction issued under Clause 38.1. The proposal or alternative submitted must be accompanied by such technical, financial or other information and considerations such that it is possible for the Engineer to study and evaluate the proposal or alternative.
- (2) The Engineer may at his discretion accept or reject such proposal or alternative.
- (3) In accepting any such proposal from the Contractor under Clause 38.3(1), the Engineer may impose such conditions as he may consider reasonable and fair.

## **39 CONSTRUCTIONAL PLANT AND EQUIPMENT, TEMPORARY WORKS AND MATERIALS**

### **39.1 Constructional Plant and Equipment and Temporary Works Exclusively for the Works**

- (1) The Contractor must only bring to the Site the Constructional Plant and Equipment and Temporary Works which he requires exclusively for the execution of the Works.
- (2) The Contractor must not remove or demobilise any Constructional Plant and Equipment and Temporary Works out of the Site after he has brought them onto the Site. The Contractor can only do so after he has obtained a prior written approval from the Engineer.
- (3) The Engineer must not unreasonably withhold any approval when the Contractor requests for the approval under Clause 39.1(2). If the Engineer refuses to give the requested approval, he must at the same time in giving the disapproval state his reason or reasons for so doing.

### **39.2 Unfixed Materials and Goods**

- (1) The Contractor must similarly not remove any unfixed materials and goods delivered to the Site unless they are required to be removed by an express provision of the Contract.
- (2) The provisions of Clauses 39.1(2) and (3) will also apply with respect to unfixed materials and goods delivered to the Site,
- (3) The legal ownership of any unfixed materials and goods will pass to the Employer after the unfixed materials and goods have been certified to be paid under any Interim Payment Certificate issued by the Engineer.
- (4) The Engineer may require the Contractor to give a confirmation or declaration that he is the legal owner of the unfixed materials or he has fully paid for them before the Engineer certifies the values of the unfixed materials and goods to be included in any Interim Payment Certificate.

### **39.3 Removal of any Constructional Plant and Equipment, Temporary Works, Unfixed Materials and Goods**

- (1) No Engineer's approval is necessary if the Contractor intends to remove or demobilise from the Site the Constructional Plant and Equipment, Temporary Works, unfixed materials and goods after the Engineer has issued the Certificate of Completion.
- (2) The Contractor must however consider his outstanding obligations after the issue of Certificate of Completion before he begins the removal and demobilisation of any Constructional Plant and Equipment, Temporary Works, unfixed materials and goods.
- (3) If the Contractor fails to remove the Constructional Plant and Equipment, unfixed materials and goods after the issue of Certificate of Completion, and there are no outstanding works remaining to be completed by the Contractor which require the use of such Constructional Plant and Equipment, unfixed materials and goods, then the Employer may, after prior notice has been given to the Contractor by the Engineer, sell or cause to sell the Constructional Plant and Equipment, unfixed materials and goods. The Employer must carry out any such sale with good faith.



The Employer must account for the sale and return the proceeds of the sale to the Contractor less any administrative charges which the Employer and the Engineer may reasonably impose.

### 39.4 The Employer not Liable for Damage

- (1) The Employer is not liable to the Contractor in any way and at any time for any damages caused to the Constructional Plant and Equipment, Temporary Works, unfixed materials and goods which the Contractor has brought onto the Site.
- (2) The Contractor may in his own discretion consider any insurance coverage as he may in his own opinion consider necessary and appropriate for the Constructional Plant and Equipment, Temporary Works, unfixed materials and goods which the Contractor has brought to the Site.
- (3) The Contractor is solely to bear the premium of any such insurance policy or policies taken out under Clause 39.4(2).

### 39.5 Conditions for Hired or Leased Constructional Plant and Equipment

- (1) The Contractor must not bring to the Site any Constructional Plant and Equipment and Temporary Works which are hired or leased unless this fact is made known to the Engineer.
- (2) The Engineer may require the Contractor to inform and state the legal ownership of the Constructional Plant and Equipment and Temporary Works which he has brought and mobilised to the Site.
- (3) The Engineer may at his discretion approve the Contractor to bring to the Site the Constructional Plant and Equipment and Temporary Works which the Contractor does not legally own subject to the Contractor satisfying or causing to satisfy the following conditions:
  - (a) the legal owner of the Constructional Plant and Equipment and Temporary Works must enter into an agreement with the Employer to allow the Employer to continue to use the Constructional Plant and Equipment and Temporary Works after the termination of the Contract;
  - (b) the agreement must take the form of a hiring of the Constructional Plant and Equipment by the Employer from the legal owner;
  - (c) the agreement must contain a condition precedent that the agreement will only come into effect upon the termination of the Contract and the Employer notifies the legal owner in writing of its commencement;
  - (d) such an agreement must contain an Employer's undertaking to account and pay for the hire charges for the use of the Constructional Plant and Equipment
- (4) If the Engineer gives his approval under Clause 39.5(3), the Constructional Plant and Equipment and Temporary Works will similarly be subject to the provisions of Clause 39.1.

### 39.6 Incorporation of Clause into Sub-Contracts

- (1) The Contractor must incorporate the whole of Clause 39 when he enters into any sub-contract so that the provisions of Clause will equally apply as if the sub-contractor is the Contractor with respect to all the Constructional Plant and Equipment, Temporary Works, unfixed materials and goods which the sub-contractor will bring and mobilise onto the Site.

## 40 COMMENCEMENT OF WORKS

### 40.1 Date for Commencement

- (1) The Date for Commencement is .
  - (a) the date specified in the Letter of Acceptance or the Appendix as the Date for Commencement; or
  - (b) if no date is specified in the Letter of Acceptance or the Appendix, the date specified in writing by the Engineer to be the Date for Commencement; in this case, and unless agreed to by the Contractor, the Date for Commencement must not be more than 30 days after the receipt by the Contractor of the Letter of Acceptance; or

- (2) The Contractor must start the construction of the Works as soon as is reasonably practical after the Date for Commencement and continue with the execution of the Works regularly and diligently.
- (3) The provision in Clause 40.1 (2) is subject to
  - (a) the Contractor having submitted evidence of insurance policy or cover note if Clause 2.1A.3 is applicable;
  - (b) the Contractor having had Workmen's Compensation Insurance Policy or SOCSO in place; and
  - (c) the provisions of Clause 41.1. . .

## **41 SITE POSSESSION**

### **41.1 Site Possession**

- (1) The Contract may provide the following:
  - (a) the extent of portions of the Site which the Contractor is to be given possession from time to time; or
  - (b) the order in which the portions of the Site are to be made available to the Contractor; or
  - (c) the availability and the nature of the access if the provision of such access is the obligation and responsibility of the Employer; or
  - (d) . . . the sequence of the construction of the Works.
- (2) The provisions in Clause 41.1(1) must be made known to the Contractor before the submission of the Tender.
- (3) The provisions in Clause 41.1(1) must be read in conjunction with the provisions in Clause 11.1.
- (4) Subject to Clause 41.1(1) and Clause 11.1, the Employer must give to the Contractor on or before the Date for Commencement the whole of the Site and full access if the provision of access is the obligation and responsibility of the Employer.
- (5) Notwithstanding the provision of this Clause, the Site or access or that part of the Site or access (if the provision of the access is the responsibility of the Employer) must be made available to the Contractor to enable the Contractor to begin with the construction of the Works.
- (6) The Employer must thereafter give to the Contractor further part or parts of the Site to enable the Contractor to proceed regularly with the construction and completion of the Works.

### **41.2 Failure to Give Site Possession**

- (1) If the Contractor suffers delay from the failure on the part of the Employer to give possession of Site or where applicable access in accordance with the provisions of this Clause, and such delay has directly or indirectly caused the delay of the Works beyond the Date for Completion, and the Contractor has incurred Costs as a consequence,
  - (a) the Engineer must take the delay into consideration in determining any extended Date for Completion to which the Contractor may be entitled under Clause 44; and
  - (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.
- (2) If the Employer fails to give possession of Site or where applicable access in accordance with the provisions of this Clause, the Contractor may by notice to the Engineer request that that part of the Works affected by the failure to give possession of the Site or access be suspended in accordance with the provision of Clause 42.1.
- (3) The Engineer may issue instruction to suspend the Works or that part of the Works if the Employer fails to give possession of Site or that part of the Site or where applicable access to the Site to the Contractor to enable the Contractor to proceed with the Works. Such instruction takes effect as if it has been issued under Clause 42.1.

## **42 SUSPENSION**

### **42.1 Instruction to Suspend**

- (1) The Engineer may by written instruction to the Contractor suspend the continuing performance of the Works or part of the Works. The Contractor must forthwith comply with such instruction.
- (2) The instruction given by the Engineer under Clause 42.1 (1) must specify that:

- (a) the suspension has been issued under Clause 42.1(1);  
(b) the period of suspension or an estimate of such a period; and  
(c) the part or parts of the Works which are to be suspended,
- (3) The Contractor is under no obligation to suspend the Works or any part or parts of the Works except when an instruction under Clause 42.1(1) has been issued.
- (4) The Contractor must during the period of the suspension take steps to properly secure and protect the Works or part of the Works which have been suspended. The Contractor must discuss with and obtain the approval of the Engineer for any steps or measures taken to secure and protect the Works or part of the Works.

#### **42.2 Consequences of Suspension**

- (1) If the suspension of the Works or part of the Works has caused the delay of the Works beyond the Date for Completion and the Contractor incurs Costs, then
- (a) the Engineer must take the delay into consideration in determining any extended Date for Completion to which the Contractor may be entitled under Clause 44; and
- (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.
- (2) The provisions of Clause 42.2 are not applicable if the suspension is
- (a) already provided for in the Contract; or
- (b) necessary due to breach or breaches of the Contract by the Contractor; or
- (c) caused by an event which is properly the responsibility or obligation of the Contractor; or
- (d) for the safety of the Works or any part of the Works as a direct consequence of the Contractor's action or inaction; or
- (e) for the safety of the Works or any part of the Works which is a direct consequence other than an Employer's Risk or a combination of Employer's Risks.

#### **42.3 Prolonged Suspension**

- (1) If the suspension instructed is such that
- (a) it will have suspended the progress of the Works or part of the Works for more than 3 calendar months;  
or
- (b) instruction to resume the Works or part of the Works suspended is not given by the Engineer within a period of 3 calendar months;
- the Contractor may then serve a notice to the Engineer requesting that Works be resumed within 14 days from the date of receipt by the Engineer of such a request.
- (2) If the Contractor has not received instruction to resume the Works or the part or parts of the Works suspended after having duly served the notice in Clause 42.3(1), the Contractor may

- (a) ~~in the case where the suspension only affects part or parts of the Works, elect to treat such part or parts as having been omitted from the Works under Clause 51; or~~
- (b) in the case where the suspension affects the whole of the Works, terminate the Contract under Clause 62 as if the Employer has committed a default under Clause 62.1(1).

#### **43 DATE FOR COMPLETION**

##### **43.1 Date for Completion**

- (1) The Contractor must construct and complete the Works on or before
- (a) the Date for-Completion or such other extended date as may be determined by the Engineer under Clause 44; or
- (b) such varied Date for Completion as may be fixed by the Engineer under Clause 43.2.

##### **43.2 Entitlement to Vary Date for Completion**

- (1) If the Engineer wishes in good faith to advance or postpone the Date for Completion, he may after consultation with the Contractor determine and fix the varied Date for Completion. The Engineer must confirm this to the Contractor in writing.
- (2) As part of the consultation process, the Contractor must after being notified by the Engineer, produce in reasonable time to the Engineer
- (a) a revised construction programme taking into considerations of the advanced or postponed Date for Completion; and
- (b) any increase or decrease in Costs.
- (3) The Engineer in determining and fixing the varied Date for Completion under this Clause may also notify the Contractor of the increase in Costs which he is entitled.
- (4) The provision of this Clause is separate and distinct from the provision of Clause 44.

#### **44 EXTENDED DATE FOR COMPLETION**

##### **44.1 Extended Date for Completion**

- (1) The Engineer may certify extension to Date for Completion of the Works by fixing an extended Date for Completion if there is delay to the completion of the Works which has been caused by any of the following events or a combination of them:
- X
- (a) any variation instructed under Clause 51;
- (b) any circumstance or occurrence entitling the Contractor to an extended Date for Completion by reason of an express provision of the Contract;
- (c) the occurrence of an Employer's Risk or a combination of these risks;
- (d) the relocation of any buried services or mains which are not shown on the Drawings; or
- (e) any act of prevention or breach of Contract by the Employer.
- (2) The certificate issued under Clause 44.1 is referred to as Certificate of Extended Date for Completion for the purposes of the Contract. This Certificate must be issued to the Contractor with a copy to the Employer.
- (3) The Certificate of Extended Date for Completion must
- (a) certify the extended date on or before which the Contractor is required to complete the Works; and
- (b) state the events listed in Clause 44.1(1) which the Engineer has relied on in so certifying including stating where applicable the relevant express provision or provisions of the Contract or the act of prevention or breach of the Contract.

- Works** (4) The Engineer may take the following factors into consideration before certifying the extension to the Date for Completion:
- (a) the reasonable efforts and steps taken by the Contractor to mitigate the effects of any delay caused by the event or events listed in Clause 44.1(1); and .
  - (b) whether the Contractor has been executing the Works regularly and diligently.
- (5) "Date for Completion" used in this Clause also includes where applicable an extended Date for Completion.

#### **442 Contractor's Notice**

- (1) If the Contractor considers that there will be or has been delay to the completion of the Works beyond the Date for Completion which are caused by the events listed in Clause 44.1(1), he must then serve a notice to the Engineer.
- (2) The notice referred to in Clause 44.2(1) must include the following information:
  - (a) the appropriate provision in Clause 44.1(1) which is applicable including the express provision of the Contract in the case of Clause 44.1(l)(b) or the details of the act of prevention in the case of Clause 44.1(l)(e); and
  - (b) the estimated extended Date for Completion which he considers that he is properly entitled to or which he requires to complete the Works.
- (3) The Contractor must act with reasonable despatch in serving the notice required in Clause 44.2(1).
- (4) If the delaying event is still operating when the Contractor serves the notice referred to in Clause 44.2(1), the Contractor must nevertheless within 28 days of the event stops being operative update or revise the details which he has submitted earlier.

#### **443 The Engineer's Certification**

- (1) If the Engineer considers that he requires further information and details from the Contractor to enable him to properly consider and certify an extension of the Date for Completion, the Engineer may request the Contractor to supply such information. The Engineer must convey such a request in reasonable time after the receipt of the Contractor's notice referred to in Clause 44.2(1). The Contractor must comply with such request
- (2) The Engineer must notify the Contractor, within 14 days of the receipt of the Contractor's notice given under Clause 44.2(1) or further information and details from the Contractor under Clause 44.3(1), whether in his opinion the Contractor is entitled to any extension to the Date for Completion. '
- (3) If the Engineer has considered that the Contractor is entitled to an extension to the Date for Completion and he has also notified the Contractor under Clause 44.3(2), the Engineer must then within a further 30 days issue the Certificate of Extended Date for Completion. •
- (4) If the delaying event on which the Engineer has certified the extended Date for Completion is continuing, the Engineer may nevertheless issue an interim Certificate of Extended Date for Completion. The interim Certificate of Extended Date for Completion must expressly state that the extension so granted is on an interim basis.
- (5) The Engineer must take the following factors into consideration before he certifies the extended Date for Completion:
  - (a) the extension to the Date for Completion previously certified if any;
  - (b) the effect of any works omitted from the Contract by the provision of Clause 51; and
  - (c) the effect of any substantial decrease in the quantity for any item of Remeasured Works which has a critical impact on the Date for Completion.
- (6) Further to Clause 44.3(5), the Engineer must not consider in his certification of any extension of the Date for Completion the effect of the events due to the Contractor's fault which operate concurrently with any of the events listed in Clause 44.1(1);

~~f) In certifying extension to the Date for Completion due to any event listed in Clause 44.1(f) which is operative after the Date for Completion, the extension certified must be such that the extended Date for Completion must continue from the Date for Completion and not from the date the event stops being operative.~~

#### **44.4 Certification after Date for Completion**

- (1) The Engineer may, before he issues the Final Payment Certificate under Clause 59.2, and irrespective if any notice has been served by the Contractor under Clause 44.2(1), consider and review all events known to him which are among those listed in Clause 44.1 and which have caused delay to the completion of the Works before the Date for Completion.
- (2) If upon such consideration and review the Engineer considers that the Contractor is entitled to an extension of the Date for Completion, he must accordingly issue a Certificate of Extended Date for Completion similar to that in Clause 44.1(2).
- (3) The Engineer must not certify any extended Date for Completion earlier than that already notified to the Contractor in this consideration and review.

### **45 RATE OF CONSTRUCTION**

#### **45.1 Slow Progress of Construction**

- (1) The Engineer may notify the Contractor if he considers that the rate of construction of the Works is not able to meet the Date for Completion or extended Date for Completion. This notice can be sent when
  - (a) the Engineer considers that the Contractor is not entitled to any extension to the Date for Completion; or
  - (b) the Contractor has not served any notice for any extension to the Date for Completion under Clause 44.2(1).
- (2) Upon the receipt of the notice referred to in Clause 45.1(1), the Contractor must immediately take all steps which he considers necessary and which the Engineer may approve to expedite progress of the Works.
- (3) The Contractor is not entitled to claim Costs for taking any steps to expedite progress subsequent to the issue by the Engineer of the notice referred to in Clause 45.1(1). The Contractor is similarly not entitled to claim Costs if he incurs additional expenditure as a consequence of the Engineer approving the steps which the Contractor has proposed to take under Clause 45.1(2).

### **46 LIQUIDATED DAMAGES**

#### **46.1 Liquidated Damages**

- (1) If the Contractor fails to complete the Works by the Date for Completion, or by any extended Date for Completion as the case may be,
  - (a) the Employer is then entitled to demand from the Contractor the sum designated as Liquidated Damages in the Contract and the Contractor must pay to the Employer on such demand; or
  - (b) the Employer is entitled to set-off from the Contractor the sum designated as Liquidated Damages any payment due or which will become due to the Contractor under the Contract.
- (2) The total amount of Liquidated Damages payable by the Contractor to the Employer must be calculated at the rate stated in the Appendix for the period from the Date for Completion (or any extended Date for Completion) to the date that the Contractor has completed the Works as certified by the Engineer.

#### **46.2 Certificate of Non-Completion**

- (1) It is a condition precedent before the Employer can exercise his option in Clause 46.1(1) that the Engineer must have certified that in his opinion there is no reason why the Contractor ought not to have completed the Works. The certificate issued by the Engineer under this clause is called in this Contract the Certificate of Non-Completion.
- (2) The Engineer must issue the Certificate of Non-Completion to the Contractor with a copy to the Employer. Where the delay to the completion of the Works has been caused by the Nominated Sub-Contractor, a copy of the Certificate of Non-Completion must also be copied to the Nominated Sub-Contractor.
- (3) The Engineer must properly consider all the circumstances and factors if the Contractor is fairly entitled to an extension of the Date for Completion before he issues the Certificate of Non-Completion.

- (1) If for whatever reason the Employer chooses not to enforce his right under Clause 46.1(1), or the Employer has for whatever reason not entitled to exercise his right under Clause 46.1(1), the Employer still retains his right to claim from the Contractor such loss, expense and any other damages which he is entitled under Common Law.

## **47 CERTIFICATE OF COMPLETION**

### **47.1 Notice of Completion of Works**

- (1) When the Contractor considers that the Works have been completed, he may serve a notice ("Completion Notice") to that effect to the Engineer. The Completion Notice also takes effect as the request by the Contractor to the Engineer to issue a certificate certifying the completion of the Works.
- (2) The Contractor must include in the Completion Notice the following undertakings:
  - (a) that the Contractor undertakes to complete with due expedition any minor works which are not yet completed; and
  - (b) that the Contractor undertakes to make good and complete with due expedition any defects which the Engineer may notify him before the expiry of the Defects Liability Period,

### **47.2 Certificate of Completion**

- (1) The Engineer must, within 14 days of his receipt of the Completion Notice do either of the following:
  - (a) The Engineer must issue the Certificate of Completion certifying that in his opinion the Works have been completed in accordance with the requirements of the Contract.
  - (b) The Engineer must reply stating that in his view the Works have not been completed. The Engineer must also specify in his reply the following:
    - (i) the detailed list of the works which remain to be completed; and
    - (ii) the detailed list of works which are not constructed in accordance with the requirements of the Contract and are thus not acceptable.
- (2) The Contractor may submit again the Completion Notice after he considers that he has completed the Works including those listed by the Engineer in his instruction issued in accordance with Clause 47.2(l)(b).
- (3) The Certificate of Completion must certify that the Works are completed on the date of his receipt of the Completion Notice or the date of his receipt of the re-submitted Completion Notice as the case may be.  
■

### **47.3 The Meaning of Completion**

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- (1) For the purpose of this Contract, 'completion' means
  - (a) that the Works can be operational and used to their full extent to satisfy the purposes and functions to which the Works were designed and intended;



- (b) that the Works are free of any defects which are readily observed and recognised;
- (c) that even if the Works contain some defects, the Engineer in his discretion considers that
  - (i) the purposes, functions, safety and integrity of the Works are not affected or compromised by these defects; and
  - (ii) the defects are otherwise minor,and
- (d) the Works have passed all the tests if such tests are required by the Contract

## **48 DEFECTS LIABILITY**

### **48.1 Defects Liability Period**

- (1) The phrase 'Defects Liability Period' means the period stated in the Appendix calculated from the date when the Contractor has completed the Works and the Engineer has certified this in Certificate of Completion.
- (2) The Engineer must notify the Contractor of any defects, minor or otherwise, that are required to be made good. The Contractor must make good all these defects notified to him
  - (a) before the end of the Defects Liability Period; or
  - (b) as soon as practicable after the expiry of the Defects Liability Period.
- (3) The notice referred to in Clause 48.1(2) must be issued to the Contractor on or before the expiry of the Defects Liability Period.
- (4) For the purpose of this Contract, 'defects' means works
  - (a) which are not constructed to the expressed or implied requirements of the Contract; or
  - (b) which have deteriorated through the neglect of the Contractor.

### **48.2 Cost of Making Good Defects**

- (1) The Contractor is solely responsible and to bear all expenses and costs incurred by him in making good any defects notified to him by the Engineer under Clause 48.1(2).
- (2) If the Contractor considers that the works which he is required to make good are not defects within the meaning of Clause 48.1(4), he may then claim the rectification of these defects as Variations in which case the provisions of Clause 51 will be applicable.

### **48.3 Failure to Make Good Defects**

- (1) If the Contractor fails within a reasonable time to commence and the making good of the defects notified to him by the Engineer, the Employer or the Engineer on his behalf is then entitled to employ and pay other persons to carry out the making good of the defects.
- (2) The Employer is entitled to recover the costs and expenses incurred in employing and paying other persons to make good the notified defects if the Contractor fails to do so by
  - (a) demanding that the amount of the costs and expenses so incurred be paid by the Contractor; or
  - (b) setting-off such amount from any amount due or to become due to the Contractor under the Contract.
- (3) The Employer must provide all details and substantiations to the Contractor
  - (a) when making the demand in Clause 48.3(2)(a); or
  - (b) before setting-off the amount due or to become due to the Contractor in Clause 48.3(2)(b).



#### **48.4 Certificate of Making Good Defects**

- (1) When the Engineer is satisfied that all defects notified to the Contractor in accordance with Clause 48.1(2) have been made good by the Contractor, he must issue a certificate to that effect. Such a certificate is called in this Contract 'Certificate of Making Good Defects'.
- (2) The Certificate of Making Good Defects must be issued to the Contractor with a copy to the Employer.
- (3) The Certificate of Making Good Defects signals that
  - (a) the Contractor is fully discharged from physically attending to the Works for the making good of defects;
  - (b) the Contractor is permitted to demobilise any remaining Constructional Plant and Equipment from the Site without requiring to secure the approval of the Engineer;
  - (c) the Contractor is only allowed to remain on Site upon the written consent of the Engineer or the Employer. ■
- (4) The Certificate of Making Good Defects does not discharge the Contractor from any liability
  - (a) incurred prior to the issuance of the Certificate; and
  - (b) in regard to any defects which are not readily observed or recognised.

#### **48.5 Diminution in the Value of the Works**

- (1) If the defects which the Contractor is required to remedy are such that, in the view of the Engineer,
  - (a) they do not affect directly or indirectly the safety, integrity or aesthetics of the Works;
  - (b) the Works or part of the Works may be further damaged in the course of making good the defects;
  - (c) the making good of the defects is relatively complex in relation to the nature of the defects; -
  - (d) the making good of the defect will take considerable time and which will disrupt and inconvenience the functional use of the Works;the Engineer may then, in his absolute discretion, or upon an application by the Contractor, instruct that the defects be not made good.
- (2) In issuing the instruction pursuant Clause 48.5(1), the Engineer may determine and include an amount representing the reduction in the value of the Works by leaving the defects as they are. This is deemed a variation (omission) for waiving the strict requirements of the Contract.

#### **49 SECTIONAL COMPLETION**

##### **49.1 Completion in Sections**

- (1) With respect to each Section of the Works, the provisions of the clauses identified in Clause 49.1 ■(2) are applicable as if each Section is the subject of a separate and distinct contract between the Employer and the Contractor.
- (2) The relevant Clauses are as follows:
  - (a) Clause 43 on the Date for Completion;
  - (b) Clause 44 on Extended Date for Completion;
  - (c) Clause 45 on Rate of Construction;
  - (d) Clause 46 on Liquidated Damages, Certificate of Non-Completion and common law rights;
  - (e) Clause 47 on the Certificate of Completion; and
  - (f) Clause 48 on Defects Liability.

## **50 CONTRACTOR TO SEARCH**

### **50.1 Contractor to Search**

- (1) The Engineer may at any time before the issue of the Certificate of Making Good Defects instruct the Contractor to carry out tests, trials or any measures which may be necessary and required to ■ search and ascertain the cause of any defects.
- (2) If the Contractor is liable for these defects under the Contract, the cost of carrying out the tests, trials or measures are to be fully borne by the Contractor including the costs and expenses incurred by the Contractor in remedying the defects.
- (3) If however the Contractor is not liable for the defects under the Contract, then the instruction issued under Clause 50.1(1) is an instruction for a Variation. The scope of this Variation includes the expenses both in searching and remedying of the defects. -

## **51. VARIATIONS**

### **51.1 Duty and Power to Issue Variations**

- (1) The Engineer must issue instructions for Variation for any part of the Works if the Variation is ■ necessary for the completion of the Works. .
- (2) The Engineer may issue instruction for Variation for any part of the Works if
  - (a) he is of the opinion that the Variation is desirable for the Works; or
  - (b) if the Variation is in any way a result of any subsequent change in the original intent of the Contract.
- (3) The Engineer's instruction for Variation will not in any way nullify the Contract.
- (4) The Contractor must comply with all instructions requiring Variations and to complete all works comprising the Variations before the Date for Completion or any extended Date for Completion. If however the instruction for the Variations is issued by the Engineer after the Date for Completion or any extension to this date, the Contractor must then complete the works comprising the Variation within a reasonable time following the issue of the instruction.

### **51.2 What Can be Variations**

- (1) A Variation which must be incidental and relating to the Works can be in any of the following manner or form or a combination of them;
  - (a) an increase or decrease in the quantity of the Works or any part of it;
  - (b) an omission of any part of the Works;
  - (c) a change in the character or quality of any part of the Works;
  - (d) a change in the Drawings;
  - (e) any required demolition or removal of any part of the Works as a consequence of a change in the Drawing; and
  - (f) a change in any specified sequence or timing of construction of any part of the Works.
- (2) An instruction which is issued to cure, or which is necessitated by, a breach of the Contract by the Contractor cannot give rise to any Variation.
- (3) There cannot be any Variation without a written instruction to that effect by the Engineer. A confirmation of verbal instruction under Clause 3.2 is a properly issued instruction within the meaning of this Clause. ■
- (4) The Engineer cannot by way of an instruction omitting any part of the Works and award the omitted works to any other person. The Contractor is entitled to claim for the loss of profit by reason of this omission.

### **51.3 Change in Quantity**

- (1) If there is any increase or decrease in the quantity of works for any Remeasured Work which is a result of the quantity exceeding or being less than the quantity stated in the corresponding item in the Bill of

Quantities for Remeasured Works, then no instruction is necessary to effect any such Variation.

#### **51.4 Contractor to Carry Out Variations**

- (1) The Contractor must give effect and implement all instructions giving rise to Variations.

#### **51.5 Tracking of Variations**

- (1) The Engineer must assign to each Variation a number for ease of tracking and monitoring. This designation of the Variation must be notified to the Contractor.
- (2) Upon so notified, the Contractor must follow the same numbering system used and assigned by the ; Engineer in all his correspondence and claims submissions relating to the Variation.

### **52 VALUATION OF VARIATIONS**

#### **52.1 Valuation Rules**

- (1) The following are applicable to all Variations instructed under Clause 51.
  - (a) If the Engineer considers that the works of a Variation are such that they are similar, and are executed under similar conditions, to corresponding items in the Bill of Quantities for Remeasured Works or Schedule of Rates for Lump Sum Items, then the rates in those items are applicable and must be used to value the works of the Variation.
  - (b) If the rule in Clause 52.1(l)(a) is not applicable, then reasonable rates in the Bills of Quantities are to be used as a basis or guide in arriving at rates of the works for the Variation.
  - (c) If the Engineer considers that the rules in both Clauses 52.1 (l )(a) and (b) are not applicable, he must then fix rates which are appropriate, fair and reasonable.
- (2) If the Contractor considers that the actual executed quantity of any item in the Bill of Quantities for Remeasured Works is such the rate for that item is rendered unreasonable or inapplicable, he may by notice to the Engineer request the Engineer to fix a rate which is fair and reasonable under valuation rule in Clause 52. 1(l)(c). Within 14 days of the Engineer's receipt of the Contractor's notice, the Engineer must notify the Contractor that he
  - (a) objects to the Contractor's request to fix rates if he considers that the valuation rule in . either Clause 52.1 (1 )(a) or (b) is applicable; or
  - (b) agrees to fix rates under the valuation rule in Clause 52. 1(l)(c).
- (3) The Contractor must include in his notice in Clause 52.1(2) the following information:
  - (a) his reasons for requiring new rates and his proposed revised rates including how he has arrived at those revised rates; and
  - (b) the documents or records which he intends to maintain or keep to substantiate the proposed revised rates.
- (4) The rates in the Bill of Quantities for Remeasured Works or the Schedule of Rates for Lump Sum Items must be used for the valuation of works omitted from the Contract.

#### **52.2 Provisional Rates**

- (1) If the Engineer requires time to fix rates in accordance with the valuation rule in Clause 52.1(1 )(b) or (c), he may determine provisional rates to enable the Contractor to include the completed Variations in Interim Payment Applications submitted under Clause 5S.1.
- (2) These provisional rates may be used in all Interim Payment Applications by the Contractor until the relevant rates are finalised or fixed by the Engineer.

- (3) The rates finalised or fixed must not be less than the provisional rates.

### **52.3 Payment of Variations**

- (1) The Contractor is entitled to include the completed Variations or identifiable part of them in his Interim Payment Applications submitted under Clause 58.1.
- (2) In doing so, the Contractor is entitled to use either the rates valued in accordance with the valuation rules in Clause 52.1(1) or the provisional rates determined in accordance with Clause 52.2.

### **52.4 Agreement on Rates**

- (1) Despite the valuation rules in Clause 52.1, the Engineer and the Contractor may, in the Engineer's discretion, agree on rates to be used to value Variations.
- (2) In attempting to agree on any rates to value any Variations, the Engineer may require the Contractor to submit quotations prior to any negotiation to agree on any rates to be used.

### **52.5 Valuation by Daywork**

- (1) Despite the valuation rules in Clause 52.1, the Engineer may include in his instruction for Variations that the Variations must be valued on a daywork basis.
- (2) In valuing Variations on a daywork basis, the rates included in the Daywork Schedule must be used, subject to any terms set out in the Daywork Schedule.
- (3) If the execution and completion of the Variations include materials whose rates are not included in the Daywork Schedule, the Contractor must furnish to the Engineer such receipts and vouchers which are necessary to prove the amounts actually incurred by the Contractor. The Contractor must also obtain the approval of any quotations before he orders any materials for Variations which are to be valued on a daywork basis.

### **52.6 Procedure for Daywork Claim**

- (1) The Contractor must, during the progress of executing the Variations, deliver at the end of each day to the Engineer
- (a) an exact list of the names, job classifications and the actual hours of work of all workmen involved in the execution of the works for the Variations on that day,
- (b) an exact list of the descriptions of all materials and their quantities incorporated into the works for the Variations on that day; and
- (c) an exact list of the Contractor's Constructional Plant and Equipment (including names of the models and the rated capacity) which are deployed and used in the execution of the works for the Variations and their actual hours of works on that day.
- (2) The lists to be submitted by the Contractor under Clause 52.6(1) above must be submitted in duplicate.
- (3) The Engineer must sign these lists submitted if they are correct, or when they are subsequently agreed with the Contractor and a copy of the signed lists will be given to the Contractor.
- (4) The Contractor is entitled to include a priced statement of labours, materials and the Constructional Plant and Equipment used in the execution of any Variations in Interim Payment Applications submitted under Clause 58.1.
- (5) The priced statements must be based on the signed lists returned by the Engineer under Clause 52.6(3), the corresponding rates and any relevant terms stated in the Daywork Schedule.

## **53 PROCEDURE FOR CLAIMS**

### **53.1 Notice of Claim**

- (1) If the Contractor intends to claim for Costs under any clause of these Conditions which expressly entitles him to do so, he must as a condition precedent to such a claim give notice of his intention to the Engineer.

- (2) The notice of claim must be served to the Engineer as soon as the Contractor can reasonably foresee an event occurring which will give rise to the claim for Costs. The notice must be served not later than 28 days after the commencement of the event giving rise to the claim.
- (3) The Contractor must include in his notice of claim for Costs the following:
  - (a) the clause of these Conditions which entitles him to the claim;
  - (b) the details of the circumstances which give rise to the claim;
  - (c) the details of the records which the Contractor intends to maintain to substantiate his entitlement to the claim; and
  - (d) the amount or estimated amount of the claim.
- (4) Upon the receipt of the Contractor's notice, the Engineer must assign a designation number to the claim for the ease of tracking and monitoring. The Contractor must use and include such designated number in all his correspondence and submissions relating to the claim. '
- (5) The Engineer must, within 21. days of the receipt of the Contractor's notice, inform the Contractor if the Contractor is entitled to the claim for Costs.

### **532 Records Keeping**

- (1) The Engineer may instruct the Contractor to maintain any records that are not mentioned by the Contractor in his notice of claim under Clause 53.1(3)(c).
- (2) The maintenance of these records instructed by the Engineer must be at the Contractor's expense.
- (3) The mere fact of the Engineer's instruction to the Contractor to maintain any additional records does not by that fact alone suggest that the Contractor is entitled to the claim.
- (4) The Contractor must permit the Engineer to inspect the records so instructed to be maintained at any time during office hours by the Engineer's giving prior notice of the intended inspection.
- (5) The Contractor must make and deliver copies of all the records maintained by the Contractor to the Engineer for the purposes of the claim if the Engineer so instructs.

### **53.3 Substantiation of the Claim**

- (1) Within 30 days of the completion of the event giving rise to the claim, or such other longer period as the Engineer may allow, the Contractor must submit to the Engineer an account of the claim.
- (2) The account submitted by the Contractor must include all particulars and substantiations which the Contractor believes will prove his entitlement together with a summary of the amount claimed.
- (3) If however the event giving rise to the claim has a continuing effect, this does not on that fact alone preclude the Contractor from submitting to the Engineer an account of the claim provided that this account must be considered as an interim account. This interim account must include all particulars and substantiations which the Contractor believes will prove his entitlement of the claim.
- (4) The Contractor may send at intervals to be agreed with the Engineer further interim accounts giving in all cases the accumulated amount of all the interim accounts.
- (5) The Contractor must submit a final account to the Engineer 30 days after the completion of all the works relating to the claim or the event giving rise to the claim stops being operative.
- (6) The Contractor must state in all the accounts submitted the relevant claim number designated by the Engineer and whether the account is a final or an interim account.
- (7) The Engineer must, within 28 days of receipt of any final account, determine the amount which the Contractor is entitled for the claim.
- (8) The Engineer may also determine any provisional value of any interim accounts submitted provided that the Engineer must not approve a value less than the provisional value when he makes a final determination.

**53.4 Payment of the Claim**

- (1) The Contractor is entitled to include the accounts of the claim (either interim or final) in his Interim Payment Applications submitted under Clause 58.1.

**53.5 Engineer's Authority**

- (1) The Engineer retains the power to determine the amount of the claims even if he considers that the Contractor has not complied in full with the provisions of this Clause. The Engineer may make a determination with whatever information he has at the time of making the determination.

**54 ASSIGNMENT AND SUB-CONTRACTING**

**54.1 Assignment**

- (1) The Employer or the Contractor cannot assign the benefits or interests of the Contract unless the assigning party requests and receives written permission from the other party to do so.
- (2) If permission is requested by one party according to Clause 54.1(1), the other party must not unreasonably withhold giving the permission unless there are good reasons for him to do so.

**54.2 Sub-Contracting**

- (1) The Contractor must obtain the Engineer's written approval if he wants to sub-contract identified parts of the Works.
- (2) The Engineer may request the Contractor to provide details of the proposed sub-contractors including their experiences, technical competence, financial standing and other relevant information before he considers giving approval in Clause 54.2(1).
- (3) The Contractor does not need to obtain the approval of the Engineer if he engages labour-only subcontractors.
- (4) The Contractor remains fully responsible for the works even if the Engineer has given his approval for those works to be carried out by sub-contractors.
- (5) The Contractor is similarly fully responsible for all the acts, neglects or defaults of his sub-contractors.
- (6) The Contractor must incorporate in all sub-contracts provisions to the effect that the sub-contracts are automatically terminated when the Contract is terminated.

**55 LUMP SUM WORKS AND REMEASURED WORKS**

**55.1 Works Included in the Contract Sum**

- (1) "Lump Sum Works" means and includes those works to be performed or goods and services to be supplied which are referred to in the Schedule of Prices for Lump Sum Items and which are not Remeasured Works.
- (2) "Remeasured Works" means and includes those works to be performed or goods and services to be supplied which are referred to in the Bills of Quantities for Remeasured Works.
- (3) With the exception of the Bills of Quantities for Remeasured Works, all information and statements on any quantities of works do not form part of the Contract.

**55.2 Contract Sum and Rates are All Inclusive**

- (1) The Contract Sum, the rates for the various items of Remeasured Works and the rates and prices in the Schedule of Rates for Lump Sum Works include all works, materials and expenditure which are indispensably necessary for the Contractor to complete the Works described in or inferred from the Contract.

**55.3 Remeasured Works**

- (2) The quantities set out in the Bill of Quantities for Remeasured Works are estimated quantities only.

- (3) The quantities indicated in the Bill of Quantities for Remeasured Works are not the actual quantities of Remeasured Works which the Contractor is required execute and complete for him to fulfil his obligations under the Contract in relation to the Remeasured Works.
- (4) The actual quantities of the Remeasured Works executed by the Contractor, and the value of the Remeasured Works, will be measured, ascertained, determined and valued in accordance with the provisions of Clause 55.4.

#### **55.4 Method of Measurement**

- (1) The method of calculating the actual quantity of Remeasured Work executed and completed by the Contractor must be carried out in accordance with the Method of Measurement
- (2) The Method of Measurement forms part of the Bills of Quantities.
- (3) Except where the Engineer has instructed under Clause 55.4(4), all Remeasured Works must be measured from the Drawings.
- (4) If the Engineer is of the opinion that physical measurement is necessary, the physical measurements must then be jointly carried out by the Engineer and the Contractor.
- (5) The Engineer must give the Contractor reasonable notice to be present if he requires physical measurement of the Remeasured Works.
- (6) If the Contractor fails to be present at the appointed time for physical measurement of the Remeasured Works despite notice having been given to him under Clause 55.4(5), the Contractor must then accept whatever measurement results obtained by the Engineer. .

#### **55.5 Variation of Rates**

- (1) Subject to Clause 52.1(2), the rates in the Bill Of Quantities for Remeasured Works must not be increased or decreased in any way due to the actual executed quantities of work being greater or less than the estimated quantities shown in the Bill of Quantities for Remeasured Works.
- (2) Clause 55.5(1) will apply even if the actual executed quantities of works are greater or less than the estimated quantities shown in the Bill of Quantities for Remeasured Works as a result of an instruction issued under Clause 51.1.
- (3) Any rate revision as a result of an instruction issued under Clause 51.1 will be carried out in accordance with the provisions of Clause 52.1.

### **56 PRIME COST AND PROVISIONAL SUMS**

#### **56.1 Prime Cost Sum and Provisional Sum**

- (1) "Prime Cost Sum" means a sum provided in the Schedule of Prime Cost and Provisional Sums of the Bills of Quantities for works to be executed or materials and services to be supplied by a Nominated Sub-Contractor.
- (2) "Provisional Sum" means a sum provided in the Schedule of Prime Cost and Provisional Sums of the Bills of Quantities for execution of works or supply of materials and services which are at the time of the Tender not designed, not confirmed to be required, not foreseen or is in such a way that the Contractor was not able to price it prior to the submission of the Tender.

#### **56.2 Operation of the Prime Cost Sums**

- (1) In respect of every Prime Cost Sum in the Schedule of Prime Cost and Provisional Sums in the Bills of Quantities, the Engineer may instruct the Contractor to enter into a sub-contractor nominated by the Employer.
- (2) The sub-contractor so nominated by the Employer under Clause 56.2(1) is the Nominated Subcontractor and the contract entered is the Nominated Sub-Contract for the purposes of the Contract.
- (3) All Nominated Sub-Contracts must be modelled and based on the Form of Nominated SubContracts published by The Institution of Engineers, Malaysia.

- (4) The following principles apply to the Prime Cost Sums, the Nominated Sub-Contractors and the Nominated Sub-Contracts:
- (a) the Engineer must issue instruction to omit the relevant Prime Cost Sum (together with any associated profit and attendance which the Contractor is entitled to) from the Contract;
  - (b) the omitted Prime Cost Sum will be substituted by the amount due to the Nominated Sub Contractor under the Nominated Sub-Contract; and
  - (c) the corresponding amount due to the Contractor for profit and attendance will also have to be included.
- (5) The Engineer may, with the consent of the Contractor and subject to any agreement with regard to rates and prices, instruct the Contractor himself in lieu of the Nominated Sub-Contractor to execute works or supply of materials and services in respect of a Prime Cost Sum. In this case, the Contractor will not be entitled to any profit and attendance.
- (6) In the case of Clause 56.2(5), the value of the works executed must be determined and measured in accordance with the provisions of Clause 51 and Clause 55.
- (7) The Engineer may in his discretion allow the Contractor to submit his tender for the works comprised in any Prime Cost Sums. If the Contractor's tender for the works of any Prime Cost Sum is accepted, the Contractor will not then be entitled to any profit and attendance charges which he would otherwise be entitled to if a Nominated Sub-Contract is awarded.

### **56.3 Operation of the Provisional Sums**

- (1) In respect of every Provisional Sum in the Schedule of Prime Cost and Provisional Sums in the Bills of Quantities, the Engineer may instruct for its expenditure.
- (2) When the Engineer issues an instruction for the expenditure of the Provisional Sum, the works executed must be valued as per the provisions of Clause 52.1 and the Contractor must be paid accordingly.
- (3) The instruction issued for the expenditure of Provisional Sum is treated in the like manner as if it is issued under Clause 51. The instruction takes effect in omitting the Provisional Sum and substituting it with a Variation whose value is to be determined in accordance with Clause 52.

### **56.4 Conversion of Provisional Sum to Prime Cost Sum**

- (1) The Engineer may if he thinks fit and proper instruct that the Provisional Sum included in the Schedule of Prime Cost and Provisional Sums in the Bills of Quantities be treated and operated as if it is a Prime Cost Sum.
- (2) If the Engineer so instructs in Clause 56.4(1), the provisions of Clause 56.2 will accordingly apply.

## **57 NOMINATED SUB-CONTRACTORS**

### **57.1 Procedure for Nomination**

- (1) The Employer or the Engineer on his behalf may first obtain tenders or quotations from various contractors for the execution of works relating to the Prime Cost Sum included in the Schedule of Prime Cost and Provisional Sums in the Bills of Quantities.
- (2) Upon the selection of the contractor either from the exercise in Clause 57.1(1) or otherwise, the Engineer will then instruct the Contractor to enter into a contract ("Nominated Sub-Contract") with the selected contractor ("Nominated Sub-Contractor").
- (3) The Nominated Sub-Contract may be based on the IEM Form of Nominated Sub-Contract for Engineering Works to be published by The Institution of Engineers, Malaysia.
- (4) The Contractor is not required to enter into the Nominated Sub-Contract with the Nominated Subcontractor if the Nominated Sub-Contractor refuses the Nominated Sub-Contract to be based on the IEM Form of Nominated Sub-Contract for Engineering Works to be published by The Institution of Engineers, Malaysia. The Contractor must report any such refusal to the Engineer.



**572 Objections to Nomination**

- (1) The Contractor is not required to enter into a Nominated Sub-Contract if he has made reasonable objections on the following grounds which the Contractor considers that, having regard to the nature and extent of the works required,
  - (a) the Nominated Sub-Contractor is in poor financial standing or solvency;
  - (b) the Nominated Sub-Contractor lacks the required technical competence; or
  - (c) the Nominated Sub-Contractor lacks the necessary plant, machinery and specialist manpower,
- (2) The Engineer may nevertheless instruct the Contractor to enter into a Nominated Sub-Contract despite reasonable objections have been raised by the Contractor under Clause 57.2(1).
- (3) If the Engineer so instructs under Clause 57.2(2), the Employer must then indemnify the Contractor against any loss, expense, damages or claims incurred by the Contractor on the non-performance of the Nominated Sub-Contractor due to the ground or grounds on which the Contractor has raised objections.
- (4) As an alternative remedy to the Contractor under Clause 57.2(3),
  - (a) the Engineer must take any delay into consideration in determining any extended Date for Completion which the Contractor may be entitled under Clause 44; and
  - (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.
- (5) The Contractor is not allowed to make any objections against any Nominated Sub-Contractor if
  - (a) the Nominated Sub-Contractor is named in any of the documents comprising the Tender; or
  - (b) the Nominated Sub-Contractor is among the contractors agreed between the Employer or the Engineer and the Contractor before the call for tenders under Clause 57.1(1).
- (6) If the Engineer considers that the Contractor has raised valid and reasonable objections under Clause 57.2(1), then the Engineer may do any of the following:
  - (a) nominate an alternative Nominated Sub-Contractor;
  - (b) invoke the operation of Clause 56.2(5); or
  - (c) where possible and practical, omit the Prime Cost Sum &om the Contract.
- (7) If the Engineer has chosen either of the options in Clause 57.2(6)(a) or (b), then
  - (a) the Engineer must take the delay into consideration in determining any extended Date for Completion which the Contractor may be entitled under Clause 44; and
  - (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.

**57.3 Payment to Nominated Sub-Contractors**

- (1) The Contractor must include the amounts claimed by the Nominated Sub-Contractor in respect of any works executed and completed or materials and services supplied by the Nominated Subcontractor in the Interim Payment Application submitted under Clause 58.1.
- (2) In respect of each of the Interim Payment Application which includes the amounts claimed by the Nominated Sub-Contractor, the Engineer must issue a certificate separately the amount due to each of the Nominated Sub-Contractor? This certificate will be known and referred to in this Contract as the NSC Payment Certificate.
- (3) The Engineer must-issue the NSC Payment Certificate to the relevant Nominated Sub-Contractor with a copy to the Employer and the Contractor.

- (4) The Engineer must issue the relevant NSC Payment Certificate at the same time he issues the Contractor's Interim Payment Certificate.
- (5) The Contractor must pay to the Nominated Sub-Contractor the amount certified on the NSC Payment Certificate within the period for honouring NSC Payment Certificate stated in the Nominated Sub-Contract
- (6) The Contractor is entitled to set-off or deduct from any amounts due to the Nominated Subcontractors on any NSC Payment Certificates if there are express provisions in the Nominated SubContract allowing him to do so.
- (7) Before issuing each Interim Payment Certificate under Clause 58.2 and the Final Certificate under Clause 592, the Engineer is entitled to instruct the Contractor to show proof that the payments due on the previous NSC Payment Certificates have been paid to the various Nominated Subcontractors; .....
- (8) If the Contractor has not paid to the Nominated Sub-Contractor on the previous NSC Payment Certificates, he may nevertheless explain to the Engineer in writing:
- (a) that he has reasonable cause for withholding or refusing to make such payment; and
  - (b) he has in writing informed the Nominated Sub-Contractor of such withholding or refusal.
- (9) If the Contractor has not given any proof after he has been so instructed by the Engineer under Clause 57.3(7), or the Engineer considers that the Contractor has no reasonable cause for withholding or refusing to make payment to the Nominated Sub-Contractor despite the explanation given under Clause 57.3(8), the Engineer may notify the Employer accordingly in writing with a copy of such notice given to the Contractor.
- (10) Upon receipt of the Engineer's notice under Clause 57.3(9), and before making payment on any Interim Payment Certificate, the Employer is entitled (but is not under an obligation to do so) to make payments directly to the Nominated Sub-Contractor the amounts which remain not paid by the Contractor.
- (11) The amounts so paid directly to the Nominated Sub-Contractor under Clause 57.3(10) by the Employer are to be deducted from any payment due or to become due from the Employer to the Contractor.
- (12) The decision by the Employer to effect direct payment to a Nominated Sub-Contractor does not on that fact alone gives rise to any contract between the Employer and the Nominated Sub-Contractor.

#### **57.4 Defaults of Nominated Sub-Contractor**

- (1) If an event arises and the Contractor is of the opinion that the event justifies the termination of the Nominated Sub-Contract, he must before starting any procedure to terminate the Nominated SubContract notify the Engineer accordingly in writing.
- (2) The Contractor must state in his written notice to the Engineer his justification for intending to terminate the Nominated Sub-Contract
- (3) If the Engineer agrees with the Contractor on his intended termination of the Nominated SubContract, he must with despatch inform the Contractor in writing of his consent to such termination.
- (4) With the consent from the Engineer given under Clause 57.4(3), the Contractor may then evoke the termination provision in the Nominated Sub-Contract.
- (5) After the Nominated Sub-Contract has been terminated, the Contractor may proceed to complete the works of the Nominated Sub-Contract himself Alternatively, the Contractor may request the Engineer to make another nomination.
- (6) In any such termination, the Contractor will only be entitled to be paid the amount of the works in the Nominated Sub-Contract which are not completed together with any profit and attendance charges if he decides to complete those works himself.
- (7) The Contractor must take all necessary steps and actions available to him to recover the Contractor's entitlement under the Nominated Sub-Contract including any performance security provided.

- (8) Upon any termination of the Nominated Sub-Contract which the Engineer has given his consent,
- (a) the Engineer must take the delay into consideration in determining any extended Date for Completion to which the Contractor may be entitled under Clause 44; and
  - (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53,

#### **57.5 Contractor's Responsibility**

- (1) The Contractor is responsible to the Employer for the works carried out and the services and the material supplied by the Nominated Sub-Contractors in the same way as if he himself has carried out the works and supplied the services and materials.

### **58 INTERIM PAYMENT CERTIFICATES AND PAYMENT**

#### **58.1 Contractor's Interim Payment Applications**

- (1) At regular intervals fixed in the Appendix to these Conditions, the Contractor may submit to the Engineer the Contractor's Interim Payment Application.
- (2) The Engineer may decide the date on or before which all Works properly completed by the Contractor can be included in any Interim Payment Application. This date will be known and referred to in the Contract as the Valuation Date.
- (3) The Engineer may prescribe the format and manner for the submission of the Interim Payment Applications.
- (4) The Contractor must include where applicable in the Interim Payment Applications the following:
  - (a) cumulative values of all Works completed up to the Valuation Date;
  - (b) subject to Clause 39.2(4), the percentage (stated in the Appendix to these Conditions) in respect of the value of unfixed materials which the Contractor has delivered to the Site which are intended solely for incorporation into the Works;
  - (c) the cumulative values of all completed Variations which have been valued by the Engineer (including those for which provisional rates have been determined) and any Variations which the Engineer has instructed to be valued by Daywork;
  - (d) any claims for Costs which the Contractor considers himself to be entitled under the Contract; and
  - (e) the cumulative amounts due to any Nominated Sub-Contractors together with any profit and attendance charges which the Contractor is entitled.
- (5) With respect to Clause 58.1(4)(a), the Contractor must include all substantiations including but not limiting to measurement sheets, computations, quantities, sketches and other relevant information for all items included in the Interim Payment Applications. The items must correspond to the items in the Schedule of Prices for Lump Sum Works and Bill of Quantities for Remeasured Works.
- (6) With respect to Clause 58.1(4)(b), the Contractor must not include in the Interim Payment Applications any materials which are prematurely delivered to the Site.

#### **58.2 Interim Payment Certificates**

- (1) The Engineer must issue an Interim Payment Certificate within 21 days of receiving the corresponding Contractor's Interim Payment Application irrespective whether the Engineer agrees or disagrees with the amounts stated in the Contractor's Interim Payment Application.
- (2) To each of the amounts valued by the Contractor in the Interim Payment Application, the Engineer must certify the amounts which in his opinion the Contractor is entitled.
- (3) The Engineer must certify on the face of the Interim Payment Certificate deductions from the cumulative amounts certified the following:

(Works the cumulative amount which the Employer is entitled to retain, this amount is called in these Conditions the Retention Monies; and

(b) the cumulative amount certified in the preceding Interim Payment Certificate.

- (4) All Interim Payment Certificates must be given a serial number for consistency of reference.
- (5) The Engineer must issue at the same time to the Employer and the Contractor one copy each of all Interim Payment Certificates.

### **58.3 Period of Honouring Certificates .**

- (1) The Employer must pay to the Contractor the amount due on Interim Payment Certificate in full on or before the end of the Period of Honouring Certificate stated in the Appendix.
- (2) The Employer can only set-off or deduct from the payments due to the Contractor on any Interim Payment Certificates when there are express provisions in these Conditions which allow the Employer to do so.
- (3) The Employer must give full details and the clause reference which he relies upon when he intends to set-off or deduct any payment due to the Contractor on any Interim Payment Certificate.
- (4) If the Employer fails to pay the Contractor according to Clause 58.3(1), he must then pay to the Contractor an additional amount together with the amount certified on the Interim Payment Certificate.
- (5) The additional amount in Clause 58.3(4) is calculated in the form of simple interest and is based on the rate stated in the Appendix.
- (6) The Contractor's right to be paid additional amounts as interests for late payment of any certified sums must not be taken as the Contractor foregoing his rights under Clause 58.4 or Clause 62 of these Conditions.

### **58.4 Suspension of Works if no Payment**

- (1) If the Employer does not pay the Contractor the full amount certified on any Interim Payment Certificate and this non-payment continues for 14 days after the end of the Period for Honouring Certificate, the Contractor may then serve a written notice to the Employer with a copy to the Engineer expressing his intention to suspend the execution of the Works.
- (2) If the Employer continues his failure to make payment after having been served with the notice which the Contractor has served upon him under Clause 58.4(1), the Contractor may then choose any of the following options:
  - (b) to suspend the execution of the whole of the Works;
  - (c) to reduce the rate of construction of the Works.
- (3) The Contractor must inform the Employer and the Engineer in writing if he chooses either of the two options in Clause 58.4(2).
- (4) If the Contractor chooses to suspend the execution of the whole of the Works, this is treated in this Contract as similar in effect to the Engineer having issued an instruction under Clause 42.1 to suspend the continuing performance of the Works and Clause 42.2(1) will be applicable.
- (5) If the Contractor chooses to reduce the rate of construction of the Works,
  - (a) the Engineer must take any delay into consideration in determining any extended Date for Completion to which the Contractor may be entitled under Clause 44; and
  - (b) the Engineer must certify the additional Costs in accordance with the provisions of Clause 53.
- (6) The Contractor's choice of either of the two options in Clause 58.4(2) must not on that fact alone be taken as the Contractor giving up his rights to claim for interest under Clause 58.3(4) or to terminate the Contract under Clause 62.

- (7) The Contractor may also claim for interest or suspend the execution of the Works if the Engineer does not issue or delay in issuing any corresponding Interim Payment Certificate despite the Contractor having submitted the Interim Payment Application.
- (8) The procedure for Clause 58.4(7) is similar to the procedure for suspending the execution of the Works for non-payment by the Employer.

#### **58.5 Correction of Certificates**

- (1) The Engineer may make corrections to any Interim Payment Certificate which has already been issued. This certificate when issued will supersede the Interim Payment Certificate which was issued earlier.
- (2) This certificate issued to correct an Interim Payment Certificate is called a Correction Certificate in these Conditions.
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- (3) A Correction Certificate must not prolong the Period of Honouring Certificate of the Interim Payment Certificate which it corrects.
- (4) The Engineer must not issue any Correction Certificate 7 days before the end of the Period of Honouring Certificate of the Interim Payment Certificate which it corrects.
- (5) A Correction Certificate must be given the same serial number as the Interim Payment Certificate which it corrects. Its serial number must however end with the letter 'C' in brackets, which is "(C)".
- (6) A Correction Certificate may either increase or decrease the values certified in an Interim Payment Certificate.

#### **58.6 Retention Monies**

- (1) The Engineer must certify on the face of Interim Payment Certificates the amount of Retention Monies.
- (2) The Retention Monies must be calculated based on the percentage stated in the Appendix and applying it to the total amount certified by the Engineer for
  - (a) the value of Works;
  - (b) the value of all Variations; and
  - (c) total value of all works for all Nominated Sub-Contractors.
- (3) The Retention Monies must not exceed the Limit of Retention.
- (4) The Limit of Retention is the amount calculated as a percentage of the Contract Sum based on the percentage stated in the Appendix.

#### **58.7 Rules Relating to Retention Monies**

- (1) The Contractor is at all times the beneficial owner of the Retention Monies.
- (2) Notwithstanding the Contractor's beneficial interests in the Retention Monies, the Employer is entitled to set-off or deduct from the Retention Monies any direct costs, losses, expenses and damages which the Employer suffers as a consequence of the Contractor's breach of the Contract.
- (3) The Employer can invoke Clause 58.7(2) only when there is no other source for any amounts due or to become due to the Contractor under the Contract when he makes the set-off or deduction.
- (4) The Engineer must issue an Interim Payment Certificate for the release of half of the amount of the Limit of Retention at the same time he issues the Certificate of Completion to the Contractor,
- (5) The Engineer must issue an Interim Payment Certificate for the release of the remaining half of the amount of the Limit of Retention at the same time he issues the Certificate of Making Good Defects.

**58.8 Deemed Payment**

- (1) If the Employer makes a set-off, or deduction from any amount due or to become due to the Contractor under the Contract, the amount set-off or deducted is regarded as having been paid by the Employer to the Contractor under this Contract

**59 FINAL PAYMENT CERTIFICATE**

**59.1 Contractor's Final Payment Application**

- (1) Within 3 months after the issue of the Certificate of Making Good Defects, the Contractor must submit to the Engineer his proposed final account for the execution and completion of the whole of the Works. This proposed final account is referred to in these Conditions as the Final Payment Application.
- (2) The Engineer may prescribe the format and manner for the submission of the Final Payment Application.
- (3) The Contractor must include where applicable in the Interim Payment Application the following:
  - (a) cumulative values of all Works completed;
  - (b) the cumulative values of all Variations including all Variations which the Engineer has instructed to be valued by Daywork;
  - (c) where Option Module A is applicable, the amount of the Additional Sum;
  - (d) any claims for Costs which the Contractor considers himself to be entitled under the Contract; and
  - (e) the cumulative amounts due to all Nominated Sub-Contractors together with any profit and attendance charges which the Contractor is entitled.
- (4) The Contractor must include all substantiations including but not limiting to measurement sheets, computations, quantities, sketches and other relevant information for all items included in the Final Payment Application. The items must correspond to the items in the Bills of Quantities.
- (5) The Contractor may request for extension of time from the Engineer for the submission of the Final Payment Application and the Engineer must not unreasonably withhold giving the approval for such a request
- (6) If the Contractor does not submit the Final Account Application within the time limit stated in Clause 59.1 or within any extended time limit given under Clause 59.1(5), the Engineer may write to the Contractor instructing for it to be submitted.
- (7) If the Contractor still does not submit the Final Account Application 14 days after having received the Engineer's instruction given to him under Clause 59.1(6), the Engineer may then proceed to issue Final Payment Certificate basing on whatever information in his possession.

**59.2 Issue of Final Payment Certificate**

- (1) Within 2 months of receiving the Final Payment Application, the Engineer may issue to the Contractor a draft final account ("Draft Final Account") for the Contractor's agreement
- (2) If the Contractor agrees to the Draft Final Account he must then inform the Engineer in writing of his agreement. If the Contractor does not respond to the Draft Final Account within 30 days of its receipt it is then considered that the Contractor has agreed to it
- (3) If the Contractor does not agree to the Draft Final Account he must then notify the Engineer in writing of his disagreement. He must in this notice also inform the items in the Draft Final Account which he disagrees.
- (4) The Engineer may hold discussions with the Contractor with the only purpose of reaching agreement on the Draft Final Account. Unless extended by the Engineer, all the discussions must be held within a period of 60 days after the receipt of the Contractor's notice of disagreement given under Clause 59.2(3).
- (5) In holding discussions with the Contractor under Clause 59.2(4), the Engineer must continue to exercise impartiality and independence in arriving at or maintaining the values of various items in the Draft Final Account
- (6) The Engineer must issue the Final Payment Certificate
  - (a) within 30 days of receiving the Contractor's written confirmation of his agreement of the Draft Final Account; or

- (b) within 30 days of reaching agreement with the Contractor on the Draft Final Account; or
  - (c) when the Contractor fails to respond within 30 days to the Draft Final Account and no notice under Clause 59.2(2) is served to the Engineer by the Contractor.
- (7) The Engineer must attach supporting documents to the Final Payment Certificate showing the Engineer's final valuation and certification of the Works including Variations, all claims that the Contractor is entitled under the Contract and all deductions or set-offs that the Employer is entitled to under the Contract.
- (8) The Final Payment Certificate must state the balance between the final certified sum under the Contract and the certified cumulative value of the preceding penultimate certificate.
- (9) The Employer must pay to the Contractor within the Period for Honouring Certificates the amount certified on the Final Payment Certificate. In making final payment to Final Payment Certificate, the Employer must also include full accounts of all payments and all deductions made (if any) from the beginning of the Contract.
- (10) If the Employer considers that the Final Payment Certificate reveals that there is outstanding amount owed by the Contractor, the Employer must then inform the Contractor accordingly. The Contractor must pay to the Employer this outstanding amount,

## **60 EFFECT OF CERTIFICATES**

### **60.1 Effect of Interim and Final Payment Certificates**

- (1) No Interim Payment Certificate or Final Payment Certificate issued by the Engineer is an indication or conclusive evidence of the acceptability of any design (if the design is the Contractor's responsibility under the Contract), or of any works, materials or workmanship.
- (2) No Interim Payment Certificate or Final Payment Certificate issued by the Engineer can be considered to be final and binding in any dispute between the Employer and the Contractor if the dispute is brought before an arbitrator or the Court
- (3) The Contractor's obligation to make good defects in the Works is not waived by the issue of an Interim Payment Certificate which includes the defects.

## **61 TERMINATION BY THE EMPLOYER**

### **61.1 Termination Due to Breaches of the Contractor**

- (1) The Engineer may issue to the Contractor a Certificate of Default if he is of the opinion that the Contractor has committed the following one or more of the following breaches of the Contract:
  - (a) wholly suspending the execution of the Works or part of the Works without reasonable cause;
  - (b) not proceeding with the construction of the Works regularly and diligently;
  - (c) not beginning the construction of the Works and there is no reason why he cannot do so;
  - (d) persistently neglects to carry out his obligations under the Contract;
  - (e) abandoning the Works and demobilising Constructional Plant and Equipment, labours and workers out of the Site;
  - (f) persistently ignores properly issued instructions issued by the Engineer;

- (g) failing to provide the required performance security; or
- (h) assigning the benefits Of the Contract to a third party without the consent of the Employer.
- (2) The Certificate of Default must specify the Contractor's breaches of the Contract which have prompted the Engineer to issue it. The Certificate of Default must also specify and state that the Contractor must make good the breaches complained of within 14 days of its receipt by the Contractor. -
- (3) The Engineer must not issue the Certificate of Default unreasonably or vexatiously.
- (4) If the Contractor continues with the breaches specified in the Certificate of Default or he does not take any active steps to make good the breaches, the Employer may then 7 days after the 14-day period mentioned in Clause 61.1(2) serve a notice to the Contractor terminating the Contract This notice is called the "Termination Notice" for the purposes of the Contract.
- (5) The Employer must not issue the Termination Notice unreasonably or vexatiously.
- (6) The Termination Notice takes effect as soon as it is received by the Contractor and the Contract is immediately terminated.
- (7) Both the Certificate of Default and the Termination Notice may be served to the Contractor in either ' of the following manners:
  - (a) by AR Registered Post; or
  - (b) by delivering a copy of the Certificate of Default or Termination Notice to the Contractor's notified address, his registered office or his site office with the Contractor or the Site Manager acknowledging and confirming receipt.
- (8) The effect of the Certificate of Default is considered to be temporarily suspended if the Contractor remedies or take active steps to remedy the breaches specified to the Engineer's satisfaction within a 14-day period or any extension of this period as may be agreed in writing by the Engineer.
- (9) If however the Contractor repeats the same breaches for which a Certificate of Default has earlier been issued, the Employer may then serve to the Contractor the Termination Notice to terminate the Contract. The Termination Notice takes effect immediately when it is received by the Contractor.
- (10) In invoking Clause 61.1 to terminate the Contract, the Employer is at the same time waiving his right to terminate the Contract by way of common law.

## **61.2 Termination Due to Bankruptcy or Insolvency of the Contractor**

- (1) If the Contractor
  - (a) (being an individual) commits an act of bankruptcy;
  - (b) (being a company) begins an application to the High Court under section 176 of Companies Act 1965 for a scheme of arrangement with his creditors except if the application relates to a scheme for the reconstruction or amalgamation of the Contractor and other company or companies;
  - (c) (being a company) has a winding up order issued against him by a court of competent jurisdiction;the Employer may then by notice ("Termination Notice") to the Contractor terminating the Contract. No Certificate of Default is required to be issued by the Engineer in this case.
- (2) The termination of the Contract takes effect as soon as the Termination Notice is served to and received by the Contractor and the Contract is immediately terminated.
- (3) The Termination Notice must state the ground listed in Clause 61.2(1) which the Employer invokes to terminate the Contract.
- (4) The Termination Notice may be served to the Contractor in either of the following manners:
  - (a) by AR Registered Post; or



- (b) by delivering a copy of the Certificate of Default or Termination Notice to the Contractor's notified address, his registered office or his site office with the Contractor or the Site Manager acknowledging and confirming receipt

### **613 Effects of the Termination**

- (1) Upon the termination of the Contract, and irrespective of the validity or otherwise of the termination, and irrespective if the Contractor intends to dispute or challenge the validity of the termination, the following rules will apply:
  - (a) The Employer is entitled to enter the Site and the Contractor can no longer be regarded as having possession of the Site.
  - (b) The Contractor must stop all his operations and move out of the Site together with his personnel and labour.
  - (c) The Contractor must not remove any of the Constructional Plant and Equipment and unfixed materials out of the Site.
  - (d) The Engineer must within 7 days after the Contract has been terminated write to the Contractor to attend a joint survey of the Works completed, the Constructional Plant and Equipment and unfixed materials remaining on the Site.
  - (e) The Contractor can only remove the Constructional Plant and Equipment and unfixed materials out of the Site after he has received instruction from the Engineer for their removal.
  - (f) If the Contractor fails or refuses to remove the Constructional Plant and Equipment and unfixed materials out of the Site after he has received an instruction from the Engineer to do so, the Employer may then remove and sell them in ways that the Employer sees fit and proper.
  - (g) The Employer must inform the Engineer in writing the value of the proceeds of sale made according to Clause 61.3(l)(f) and any reasonable administrative charges which he may want to impose.
  - (h) Liquidated Damages (if any) which continue to be deductible at the time of termination of the Contract will immediately stop being payable.
- (2) After the termination of the Contract, the Employer may complete the remaining Works himself or the Employer may employ other contractor or contractors to complete the Works.
- (3) The Employer or his chosen contractor or contractors may use the Constructional Plant and Equipment and unfixed materials but the use of these must be properly accounted to the Contractor.

### **61.4 Payment After Termination**

- (1) The Engineer must after the termination of the Contract issue a certificate on the financial position of the Contract. This certificate is referred to in these Conditions as the Certificate of Termination Cost
- (2) The Engineer must certify the values of the following items in the Certificate of Termination Cost:
  - (a) certified sum of all Works completed by the Contractor up to the date of the termination of the Contract based on the joint survey conducted according to Clause 61.3 (1)(d);
  - (b) certified value of all Variations completed by the Contractor including all the Variation<sup>^</sup> which are to be valued by Daywork;
  - (c) Costs which the Engineer considers that the Contractor is entitled under the Contract;
  - (d) cumulative amounts due to all Nominated Sub-Contractors together with any profit and attendance charges which the Contractor is entitled;
  - (e) value of the Performance Security that the Employer has made demand and been paid;

- (f) amounts due to the Contractor for the use of the Constructional Plant and Equipment and unfixed materials under Clause 61.3(3); and
- (g) sale proceeds (if any) for the sale of the Constructional Plant and Equipment and unfixed material according to Clause 61.3(1)(g).
- (3) In addition to the items in Clause 61.4(2), the Engineer must also certify the values of the following items in the Certificate of Termination Cost:
- (a) the costs of the Employer in completing the remaining Works;
  - (b) the costs of making good any defects in the Works;
  - (c) the administrative charges which the Employer may reasonably impose in selling the Constructional Plant and Equipment according to Clause 61.3(l)(g);
  - (d) any other costs which the Employer is entitled to claim from the Contractor under express provisions of the Contract
- (4) The Certificate of Termination Cost must state the difference in the total value certified in Clause 61.4(2) less the total value certified in Clause 61.4(3). The balance will be the value certified as payable by the Contractor to the Employer or by the Employer to the Contractor as the case may be.
- (5) The payment due on the Certificate of Termination Cost must be paid within a period of 30 days of the issue of the Certificate. ■
- (6) The Engineer must issue the Certificate of Termination Cost as soon as he can ascertain and certify all the applicable values in Clause 61.4(2) and Clause 61.4(3) or within a period of 6 months after the termination of the Contract whichever is later.
- (7) The Contractor will not be entitled to any payment (if any)- after the termination of the Contract until the Engineer has issued the Certificate of Termination Cost.

## **62 TERMINATION BY THE CONTRACTOR**

### **62.1 Termination Due to Breaches of the Employer**

- (1) The Contractor may issue to the Employer a notice specifying that the Employer has committed one or more of the following breaches of the Contract:
- (a) the Employer does not pay or does not pay to the Contractor in full the amounts certified ■ in any Interim Payment Certificate;
  - (b) the Employer has interfered, influenced or in any other way obstructed the Engineer's certification process;
  - (c) the Employer does not have a replacement Engineer within 30 days of the Engineer stops being the Engineer for the purposes of the Contract
- (2) The notice given by the Contractor to the Employer is known in these Conditions as the "Notice of Default" and this must state the provision in Clause 62.1(1) which the Contractor intends to invoke to terminate the Contract.
- (3) The Contractor must not issue the Notice of Default unreasonably or vexatiously.
- (4) The Notice of Default must require the Employer to make good the specified breaches within a period of 14 days of its receipt.
- (5) If the Employer continues with the breaches specified in the Notice of Default or does not take any active steps to remedy the specified breaches, the Contractor may then 7 days after the 14-day period mentioned in Clause 62.1(4) serve a notice to the Employer to terminate the Contract. This notice is called the "Contractor's Termination Notice" for the purposes of the Contract
- (6) The Contractor's Termination Notice takes effect as soon as it is received by the Employer and the Contract is at that time immediately terminated.
- (7) The Contractor must not issue the Contractor's Termination Notice unreasonably or vexatiously

- (8) Both the Notice of Default and the Contractor's Termination Notice may be served to the Employer in either one of the following manners:
- (a) by AR Registered Post; or
  - (b) by delivering a copy of the Notice of Default or Contractor's Termination Notice to the Employer's notified address, his registered office or his site office with the Employer or his agent acknowledging and confirming receipt.
- (9) The effect of the Notice of Default is considered to be temporarily suspended if the Employer remedies the breaches specified within the 14-day period,
- (10) If however the Employer repeats the same breaches for which a Notice of Default has earlier been issued, the Contractor may serve to the Employer the Contractor's Termination Notice. The Contractor's Termination Notice takes effect immediately when it is received by the Employer and the Contract is immediately terminated.

## **62.2 Termination Due to Bankruptcy or Insolvency of the Employer**

- (1) If the Employer
- (a) (being an individual) commits an act of bankruptcy;
  - (b) (being a company) begins an application to the High Court under section 176 of Companies Act 1965 for a scheme of arrangement with his creditors except if the application relates to a scheme for the reconstruction or amalgamation of the Employer and other company or companies;
  - (c) (being a company) has a winding up order issued against him by a court of competent jurisdiction;
- the Contractor may then by Contractor's Termination Notice to the Employer terminate the Contract immediately. No Notice of Default is required to be issued by the Contractor in this case.
- (2) The termination of the Contract takes effect as soon as the Contractor's Termination Notice is served to and received by the Employer and the Contract is immediately terminated.
- (3) The Contractor's Termination Notice must state the ground listed in Clause 62.2(1) which the Contractor invokes to terminate the Contract ■
- (4) The Contractor's Termination Notice may be served to the Employer in either of the following manners:
- (a) by AR Registered Post; or
  - (b) by delivering a copy of the Contractor's Termination Notice to the Employer's notified address, his registered office or his site office with the Employer or his agent acknowledging and confirming receipt.

## **62.3 Effects of Termination of the Contract by the Contractor**

- (1) Upon the termination of the Contract, and irrespective of the validity or otherwise of the termination, and irrespective if the Employer intends to dispute or challenge the validity of the termination, the following rules will apply:
- (a) The Employer is entitled to enter the Site and the Contractor can no longer be regarded as having possession of the Site.
  - (b) The Contractor must move out of the Site together with his personnel, labour and all the Constructional Plant and Equipment and unfixed materials.
  - (c) The Engineer must within 7 days after the Contract has been terminated write to the Contractor to attend a joint survey of the Works completed, the Constructional Plant and Equipment and unfixed materials remaining on the Site,
- (2) After the termination of the Contract, the Employer may where possible complete the remaining Works himself or he may employ other contractor or contractors to complete the Works.

**62.4 Payment After Termination**

- (1) The Engineer must after the termination of the Contract issue a certificate on the financial position of the Contract. This certificate is referred to in these Conditions as the Certificate of Termination Cost .
- (2) The Engineer must certify the values of the following items in the Certificate of Termination Cost:
  - (a) certified sum of all Works completed by the Contractor up to the date of the termination of the Contract based on the joint survey conducted according to Clause 62.3(l)(c);
  - (b) certified value of all Variations completed by the Contractor including all the Variations which are to be valued by Daywork;
  - (c) Costs which the Engineer considers that the Contractor is entitled under the Contract;
  - (d) cumulative amounts due to all Nominated Sub-Contractors together with any profit and attendance charges which the Contractor is entitled;
  - (e) value of the Performance Security that the Employer has made a call according to Clause 10.4 of these Conditions;
- (3) In addition to the items in Clause 62.4(2), the Engineer must also certify the values of the following items in the Certificate of Termination Cost:
  - (a) the costs of making good any defects in the Works;
  - (b) any other costs to the Employer which the Employer is entitled to claim from the Contractor according to express provisions of the Contract
- (4) The Certificate of Termination Cost must state the difference in the total values certified in Clause 62.4(2) less the total values certified in Clause 62.4(3). The balance will be the value certified as payable by the Contractor to the Employer or by the Employer to the Contractor as the case may be,
- (5) The Engineer must issue the Certificate of Termination Cost as soon as he can ascertain and certify all the applicable values in Clause 62.4(2) and Clause 62.4(3) or within a period of 6 months after the termination has taken effect whichever is later.
- (6) The Contractor will not be entitled to any payment (if any) after the termination of the Contract until the Engineer has issued the Certificate of Termination Cost.
- (7) The payment due on the Certificate of Termination Cost must be paid within a period of 30 days of the issue of the Certificate.

**63 DISPUTE RESOLUTION**

**63.1 Reference to Arbitration**

- (1) If there is any dispute between the Employer and the Contractor in any matters relating to or arising from the Contract, either the Employer or the Contractor must first refer the dispute or difference to arbitration for its resolution before starting any legal action in court,
- (2) The reference to arbitration by either the Employer or the Contractor to arbitration is subject to the applicability of Option Module D. The provisions of Module D if they are applicable will have to be applied and Clause 63.1 can only be invoked when any of the following event first occurs:
  - (a) if the mediation does not result in a settlement agreement entered into between the Employer and the Contractor and the mediator decides to terminate the mediation process; or
  - (b) if either the Employer or the Contractor decides, after the commencement of mediation process, not to proceed with mediation and conveys this decision to the other party in writing; or
  - (c) both the Employer and the Contractor agree in writing between themselves not to proceed with mediation.

- (3) The party that starts the reference to arbitration must first serve a notice ("Arbitration Notice") to the other party.
- (4) The Arbitration Notice must be served in any of the method provided in Clause 9.1 of these Conditions,
- (5) The Arbitration Notice can only be served after
  - (a) the termination of the Contract irrespective if the termination is challenged; or
  - (b) the issue of Certificate of Completion; or
  - (c) one party claims that the Works have been completed and this is denied by the other party; or.
  - (d) both the Employer and the Contractor agree to refer the dispute or difference between them to arbitration,
- (6) Where Module D applies, it is agreed that issues not raised in mediation process may be raised in arbitration by either of the parties.
- (7) The arbitration between the Employer and the Contractor is governed by Arbitration Act 2005 and both the Employer and the Contractor agree that Part III of Arbitration Act 2005 applies to the arbitration.
- (8) A dispute or difference is said to have arisen between the Employer and the Contractor when one party asserts a statement or makes a claim and it is denied, or ignored, by the other.
- (9) The Employer and the Contractor agree to the seat of arbitration stated in the Appendix.
- (10) The Arbitration Rules published by The Institution of Engineers, Malaysia apply to the arbitration between the Employer and the Contractor.

### **63.2 Appointment of Arbitrator**

- (1) The arbitration must be held before a single arbitrator.
- (2) The parties may agree on the choice of the arbitrator among themselves. If they cannot agree on the choice of an arbitrator, the party who serves the Arbitration Notice must then apply to the President of The Institution of Engineers, Malaysia to appoint an arbitrator.
- (3) If the President of The Institution of Engineers, Malaysia appoints the arbitrator, it is considered that the two parties have jointly agreed on the appointment unless there are considerations which prevent the appointed arbitrator from acting as the arbitrator.

### **63.3 Powers of the Arbitrator .**

- (1) The arbitrator has the following powers:
  - (a) to open up, review and revise any certificate, decision or opinion of the Engineer;
  - (b) to determine and declare all disputes or differences which have been raised by both the Employer and the Contractor;
  - (c) to award interests including interests which are accrued before and after the publication of the award and the rate of these interests.
- (2) The parties agree that the award published by the arbitrator is final and binding on them.

## **Option Module A: Contract Sum Difference**

**A1** This provision only applies when the Engineer prepares the Final Payment Certificate.

**A2** If the difference in the total sum of Bill B and Bill C in the Final Payment Certificate is less than the total sum of Bill B and Bill C in the Bills of Quantities, the Contractor is then entitled to an additional payment which is to be computed using the formula in Clause A4.

**A3** The following notations are used with their corresponding meanings indicated:

**Si** : the sum for Bill B in the Bills of Quantities in the Contract

**Si** : the sum for Bill C in the Bills of Quantities in the Contract

**53** : the sum for Bill B of the Bills of Quantities in the Final Payment Certificate

**54** : the sum for Bill C of the Bills of Quantities in the Final Payment Certificate

**A4** The Contractor is only entitled to an additional sum ("Additional Sum") when  $(S3 + S4)$  is less than  $0.75 \times (Si + Si)$  and the additional sum is computed as follows:

$$\text{Additional Sum} = 0.05 \times [0.75 \times (Si + Si) - (S3 + S4)]$$

**A5** The Engineer must include this Additional Sum payable in the Final Payment Certificate as Costs to the Contractor.

**A6** For the avoidance of doubt, the entitlement to this Additional Sum is irrespective of whether the Contractor has served a notice to that effect.

**B1** This module only applies to upward changes in price of the following materials used in the Works. The materials are cement, steel reinforcement bars, bitumen and diesel.

**B2** Where Option Module B applies, the Contractor must include in his Tender the base price ("Base Price") for each of the four materials on which he had based his Tender.

**B3** In submitting his claim for additional payment according to this Option Module B, the Contractor must produce all relevant documents to substantiate his claim together with detailed computations. The substantiations required include where applicable, purchase orders, delivery orders,, payment vouchers, receipts and others,

**84** The Contractor is entitled to include his claim according to this Option Module B in the Contractor's Monthly Application.

**85** The Engineer must, when the Contractor has included his claim under this Option Module in Contractor's Monthly Application, certify accordingly the Contractor's entitlement in the corresponding Interim Payment Certificate.

**86** The Engineer must certify the Contractor's entitlement according to this Option Module as Costs.

**87** The Contractor's inclusion of his claim under this Option Module is on that fact alone a notice to claim for Costs under the provision of Clause 53.1 of the Conditions.

**88 Adjustment for Cement Component**

Adjustment for the increase in the price of cement or cementitious products bought and delivered to Site by the Contractor must be computed in accordance with the following formula:

$$A_o = 0.85 \times (P_c/100) \times (G - C_o)C_o$$

Where

$A_o$  = increase in the cost of work during the month under consideration due to changes in the price for cement

$C_i$  = the Base Price of cement

$C_o$  = the average purchase price for cement or cementitious products which the Contractor can substantiate for the month preceding the Valuation Date

$P_c$  = percentage of cement component of the work

**89 Adjustment for Steel Reinforcement Bars Component**

Adjustment for the increase in the price of steel reinforcement bars bought and delivered to Site by the Contractor must be computed in accordance with the following formula:

$$A_s = 0.85 \times (P_o/100) \times (S_i - S_o)/S_o$$

Where

$A_s$  = increase in the cost of work during the month under consideration due to changes in the price for steel reinforcement bars

$S_i$  = the Base Price for steel reinforcement bars

$S_o$  = the average purchase price for steel reinforcement bars which the Contractor can substantiate for the month preceding the Valuation Date

$P_s$  = percentage of steel reinforcement bars component of the work

Adjustment for the increase in the price of bitumen bought and delivered to Site by the Contractor must be computed in accordance with the following formula:

$$Ab = 0.85 \times (Pb/100) \times (Bi - B_o)/B_o$$

Where .

Ab = increase in the cost of work during the month under consideration due to changes in the price for bitumen

B<sub>i</sub> = . the Base Price for bitumen

B<sub>o</sub> = the average purchase price for bitumen or bituminous products which the Contractor can substantiate for the month preceding the Valuation Date

Pb = percentage of bitumen component of the work

**BII Adjustment for Diesel**



Adjustment for the increase in the price of diesel bought and delivered to Site by the Contractor must be computed in accordance with the following formula:

$$Ar = 0.85 \times (Pi/100) \times (Fi - F_o)/F_o$$

Where

Ar = increase in the cost of work during the month under consideration due to changes in the price for diesel

F<sub>i</sub> = the Base Price for Diesel

F<sub>o</sub> = the average purchase price for diesel which the Contractor can substantiate for the month preceding the Cut-Off Date

Pr = percentage of diesel component of the work



## **Option Module C: Termination without Default**

- C1** The Employer is entitled to terminate the Contract without the need to give any reason to the Contractor by giving the Contractor 14-day notice ("Termination Notice") that the Contract will be terminated in accordance with this Option Module. A copy of this notice must be given to the Engineer.
- C2** The Employer can exercise his right in this Option Module at any time before the issue of the Certificate of Completion.
- C3** The mode of service of the notice in Clause C1 can be either of the following:
- (a) by AR Registered Post; or
  - (b) by delivering a copy of the notice to the Contractor's notified address, his registered office, his address as it appears in the Articles of Agreement, or his site office with the Site Manager acknowledging and confirming its receipt.
- C4** The termination takes effect at the end of the 14-day period after the Contractor has received the notice.
- C5** The Employer's right in this Option Module must be exercised in, and is subject to the principle of good faith.
- C6** The Employer must not terminate the Contract by invoking his right in this Option Module in order to execute the Works himself or to arrange for the Works to be executed by another contractor.
- C7** The Contractor may as soon as practical after the receipt of the Termination Notice demobilise all his Constructional Plant and Equipment, unfixed materials, tools, labour and others from the Site.
- C8** After this termination of the Contract, the provisions of Clause 61.3(l)(a), (b), (d), (f), (g) and (h) and Clause 61.4 will apply (with the necessary changes where applicable).

## **Option Module D: Mediation**

**D1** Where the provisions of Module D apply, Clause 63.1 can only be invoked after any of the following events first occurs: ■

- (a) after the mediation does not result in a settlement agreement entered into by both the Employer and the Contractor and the mediator decides to terminate the mediation process; or
- (b) if either the Employer and the Contractor decides, after the commencement of mediation process, not to proceed with mediation and conveys that decision to the other party in writing; or
- (c) both the Employer and the Contractor agree in writing between themselves not to proceed with mediation.

**D2** Either the Employer and the Contractor can start the mediation process by one party sending a notice to the other party of his intention of referring any dispute or difference between them to be resolved with the assistance of a mediator.

**D3** The mode of service of the notice in Clause D2 can be either of the following:

- (a) by AR Registered Post; or
- (b) by delivering a copy of the notice to the address as it appears in the Articles of Agreement, or to the other party's registered office or the site office with an authorised representative acknowledging its receipt.

**D4** The parties may mutually agree on the choice of a mediator. If they are unable to agree on the choice of a mediator, then the President of The Institution of Engineers, Malaysia may appoint the mediator on the request of the party who starts the mediation process.

**D5** The parties among themselves or the chosen mediator with the agreement of the two parties may choose either of the following rules to govern the mediation process:

- (a) the Mediation Rules published by Kuala Lumpur Regional Centre for Arbitration; or
- (b) the Mediation Rules published by Construction Industry Development Board, Malaysia; or
- (c) the Mediation Rules published by Bar Council, Malaysia.

**D6** Any issue or difference which is the subject matter of a settlement agreement entered into between the Employer and the Contractor after the mediation process can no longer be considered as a dispute or difference between the two parties in Clause 63.1.

## **APPENDIX TO THE CONDITIONS OF CONTRACT**

<b><u>Brief Description</u></b>	<b><u>Clause</u></b>	<b><u>Provision</u></b>
<b>% of direct relevant costs and overhead costs representing head office overheads financing costs</b>	Clause 1.1(12) (c)	.....% (6% if none is stated)
<b>Performance Security in % of Contract Sum</b>	Clause 10.1(3)	.....% (5% if none is stated)
<b>All Risks Insurance Policy Insured Sum</b>	Clause 20A.l(4) or 20B.l(3)	<b>RM.....</b> (Contract Sum is the minimum value)
<b>Third Party Liability Insured Sum</b>	Clause 20A. 1(5) or 20B.l(4)	<b>RM.....</b> (If Contract Sum is than RM then coverage RM 500,000.00, else coverage amount is RM 1,000,000.00)
<b>Date for Commencement</b>	Clause 37.1(l)(a)	-----
<b>Liquidated Damages</b>	Clause 46.1(2)	<b>RM...../day</b>
<b>Defects Liability Period</b>	Clause 48.1(1)	.....months (12 months if none is stated)
<b>Contractor's Interim Payment Applications</b>	Clause 58.1(1)	----- (Monthly if none is stated)
<b>Contractor's Interim Payment Applications: % of the costs of materials on site</b>	Clause 58.1(4) (b)	.....% (75% if none is stated)
<b>Period of Honouring Certificate</b>	Clause 58.3(1)	..... days/months (30 days if none is stated)
<b>Rate of Interest for overdue payments</b>	Clause 58.3(5)	.....% (6% if none is stated)
<b>Retention Monies in % of Certified Amount in Interim Payment Certificates</b>	Clause 58.6(2)	.....% (10% if none is stated)

***LEM Form of  
Contract  
For Civil Engineering  
Works***

**Malaysia**

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<b>Limit of Retention in % of Contract Sum</b>	Clause 58.6(4)	.....% <b>(5% if none is stated)</b>
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<b>Seat of Arbitration</b>	Clause 63.1(9)	<b>(The Institution of Engineers, Malaysia at Petaling Jaya if none is stated)</b>
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<b>Option Modules</b>	Clause 1.1(23)
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<b>Sections 49.1</b>	Clauses 1.1 (29) &
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<b><u>Descripti on</u></b>	<b><u>Date for Completion Liquidated Damages</u></b>
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1	RM...../day
2	RM...../day
3	RM...../day
4	RM...../day
5	RM...../day



## **IEM Form of Contract for Civil Engineering Works**

### **PROFORMA OF PERFORMANCE BOND**

This Agreement is dated.....

#### **Parties to the Agreement**

- (1) (Company No.:.....)  
is a company incorporated in Malaysia and has its registered office at  
..... ("Employer").
- (2) (Company No.: ..... )  
is a company incorporated in Malaysia and has its registered office at  
..... ("Guarantor").

#### **Background to Agreement**

- (A) The Employer has awarded a contract to .....  
("Contractor") for the construction and completion of the project known and referred to as  
.....(called in this Agreement the "Contract").
- (B) A requirement of the Contract is such that the Contractor will have to provide a guarantee to the Employer as security for the Contractor's performance of the Contract.
- (C) The Guarantor is a licensed bank operating in Malaysia has agreed to guarantee the Contractor's performance of the Contract.

#### **The Terms**

Based on the background given above, the Guarantor agrees with the Employer as follows:

1. The Guarantor must pay to the Employer a sum of Ringgit Malaysia: ..... (RM ..... ) only if and when there is a written demand made by the Employer to the Guarantor stating that the Contractor has failed in his performance of the Contract
2. Subject to the requirement in Clause 3 below, the Guarantor must pay to the Employer upon the Employer's demand. This is so even if there is any protest or disagreement that the Guarantor must not make any payment to the Employer.
3. The only requirement that the Employer must exhibit in his written demand is that the written demand must be accompanied by a Certificate of Default (or a certified true copy of this) issued by the Engineer of the Contract.
4. The Guarantor is not discharged from his obligation stated in this Agreement even if there are changes to the Contract either with or without the knowledge or agreement of the Guarantor.
5. This Agreement cannot be revoked by the Guarantor.
6. This Agreement is valid and is binding on the Guarantor until.....' (date) or any extension given by the Guarantor to continue its validity.
7. The Employer must make any demand on this Agreement before the validity of this Agreement expires.

Signed by authorised representatives of the Guarantor: '

(Name:..... )

(Name:..... )



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